

# Islands, Vitamins, Salt, Germs: Four Visions of the Future of ADR in Law Schools (and a Data-Driven Snapshot of the Field Today)

MICHAEL MOFFITT\*

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\* Associate Dean for Academic Affairs, James O. and Alfred T. Goodwin Senior Faculty Fellow, Associate Professor of Law and Associate Director of the Appropriate Dispute Resolution Center at The University of Oregon School of Law. For their assistance in researching and editing this article, I thank Jill Forcier, Ashley Glassman, Caitlin O'Donnell, Shaffer Claridge, and Kristin Denmark. For their assistance with the statistical analyses in this article, I thank David Evans, Craig Ashford, and Professor Susan Moffitt Clark (Brown University). I absolve all of the above from responsibility for any of my errors.

## I. INTRODUCTION

Many have written about the growth and evolution of Alternative Dispute Resolution (ADR), both within law schools and in broader contexts.<sup>1</sup> With this article, I hope to add two things to those descriptions of the field.

First, I provide a more detailed and data-driven snapshot of the field's recent history within the legal academy. How large is the field? Is it growing? What do we know about those who are joining the ranks of ADR faculty and those who are leaving it? How many courses do ADR faculty teach, and what do they wind up teaching? What roles do gender and teaching experience play in who teaches or in what they teach? What do we know about the schools at which law faculty are teaching ADR?

Numbers alone cannot, of course, present the full picture of the contributions, the challenges, the opportunities, and the evolution associated with ADR in law schools. Just as disputes almost always wind up being about more than just numbers, no comprehensive history of the study of disputes could reasonably wind up being about only numbers. At the same time, individual narratives, no matter how compelling, provide only a partial picture of the field. I provide these numbers, therefore, with full recognition of their limitations *and* with respect for the pieces they provide to this puzzle.

Second, I suggest four different models for describing how law schools approach their ADR offerings:

- A small number of law schools may become *Islands* of ADR. Although every law school offers its students the opportunity to receive some instruction in ADR, these *Island* schools have much richer curricular and co-curricular offerings than their competitors. For law schools with an *Island* approach, ADR is part of the school's distinctiveness.
- Some schools may treat ADR as *Vitamins*. Persuaded that an understanding of ADR is foundational to modern lawyering, these schools require every student to take at least the recommended dosage of ADR. ADR offerings under the *Vitamin* model are stand-

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<sup>1</sup> For an outstanding example of a history of the evolution of ADR principally in the context of law, see Carrie Menkel-Meadow, *Mothers and Fathers of Invention: The Intellectual Founders of ADR*, 16 OHIO ST. J. ON DISP. RESOL. 1 (2000). For a flavor of the disciplinary perspectives beyond law from which scholars have studied and described the field, see BARRIERS TO CONFLICT RESOLUTION (Kenneth Arrow et al. eds., 1995); THE HANDBOOK OF CONFLICT RESOLUTION (Morton Deutsch & Peter T. Coleman eds., 2000); MICHAEL L. MOFFITT & ROBERT C. BORDONE, THE HANDBOOK OF DISPUTE RESOLUTION (2005).

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alone courses, consumed outside of the context of the traditional law school curriculum.

- Some schools may treat *ADR* as *Salt*—vital seasoning for many different offerings, but never consumed on its own. Rather than treat *ADR* as a topic that students should learn independent of doctrinal areas of the law, these schools consciously incorporate small doses of *ADR* throughout the curriculum.
- Finally, individual faculty members at some law schools may intentionally, but quietly, incorporate *ADR* as *Germes* into their courses. Acting not as part of a concerted, school-wide effort but rather from an individual conviction about *ADR*'s importance, these faculty serve to transmit *ADR* concepts to (potentially unwitting) law students.

These four models are not, of course, mutually exclusive. One might find variations on each of these themes occurring at a single school. But the theoretical underpinnings of each are distinct enough that examining them separately may shed light on some of the curricular decisions law schools face today about *ADR*. Furthermore, these four visions of *ADR*'s future in law schools provide an opportunity to return to the data and to test the extent to which law schools are already pursuing one or more of these visions.

This article is neither a prescriptive argument ("This is how every law school should handle its *ADR* curriculum, staffing, and programming.") nor a faux crystal ball ("By the year 2020, all law schools will be doing the following with *ADR*"). Confessing this at the outset of the article is dangerous because it risks suggesting that I have nothing to say, and yet take many pages to say it.

My aim with this article, however, is neither to persuade nor to predict. My aim is to describe. Researching and analyzing these data challenged, and in some cases debunked, a number of perceptions I previously held about the current state of the field. Reading about the historical development of other areas of legal study caused me to look more closely at some of the trajectories I see today in *ADR* offerings. The process of articulating these four different models helped me to reconnect with and appreciate the value inherent in different schools' approaches to teaching the topic. I hope that readers will have a similar experience as they consider this article's content.

## II. A DATA-DRIVEN SNAPSHOT OF THE FIELD

The data underlying this article's analyses are drawn from four principal sources. First, and most significantly, I compiled and analyzed data from the

AALS Directory of Law Teachers—the 2007–2008 edition, the 2002–2003 edition, and the 1997–1998 edition. In particular, for each faculty member listed as teaching in the Alternative Dispute Resolution “Subject Area” of the Directory, I collected his or her reported school, gender, experience, and course names. For details on the methodology I used for collecting, organizing, and analyzing these data, and for a few words about the limitations of these data, see Appendix A. I supplemented these data with membership information from the American Bar Association Section on Dispute Resolution. I also drew some data from the online database jointly maintained by the ABA Section on Dispute Resolution and the University of Oregon Appropriate Dispute Resolution Center.<sup>2</sup> Finally, and with considerable reluctance,<sup>3</sup> I included some of the data provided in the U.S. *News & World Report* annual rankings of law schools.

I have tried, below, to use these data to paint a picture of the field today. Whenever possible, and within the limitations of the data to which I had access, I also tried to provide some sense of the past decade, with an eye toward identifying possible trends. I have done my best to collect and analyze these data with dispassion and curiosity. I wanted (and continue to want) to understand the field as it is, not how I or others may wish it to be.

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<sup>2</sup> For more information regarding the online database, see Oregon Law ADR Center, ABA Directory, <http://www.adr.uoregon.edu/aba/> (last visited Oct. 20, 2009). For several years, the ABA Section on Dispute Resolution and the University of Oregon School of Law have collaborated to maintain an online directory of ADR offerings at U.S. law schools. This database provides self-reported information about courses, requirements, and certain other offerings. The quality of this self-reported information varies, of course. When we get responses from schools, those responses tend to be high-quality and detailed. However, we have not gotten responses from a number of schools, making these data less reliable in the aggregate than the snapshots from the AALS directory.

<sup>3</sup> A footnote fully documenting the loud, often angry-sounding, and often correct criticisms of the U.S. *News* methodology and its effects would occupy more space than is deserved. For a small sample, see Alex M. Johnson, Jr., *The Destruction of the Holistic Approach to Admissions: The Pernicious Effects of Rankings*, 81 IND. L. J. 309 (2006); Brian Leiter, *How to Rank Law Schools*, 81 IND. L. J. 47 (2006); Louis H. Pollak, *Why Trying to Rank Law Schools Numerically Is a Non-Productive Undertaking: An Article on the U.S. News & World Report 2009 List of “The Top 100 Schools”*, 1 DREX. L. REV. 52 (2009); Theodore P. Seto, *Understanding the U.S. News Law School Rankings*, 60 SMU L. REV. 493 (2007); David A. Thomas, *The Law School Rankings Are Harmful Deceptions: A Response to Those Who Praise the Rankings and Suggestions for a Better Approach to Evaluating Law Schools*, 40 HOUS. L. REV. 419 (2003); David C. Yamada, *Same Old, Same Old: Law School Rankings and the Affirmation of Hierarchy*, 31 SUFFOLK U. L. REV. 249 (1997).

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### A. *Size and Growth of the Field*

Perhaps the two most basic descriptions one might seek about the field are (1) how large it is and (2) whether it is growing.

Like many areas, ADR struggles with boundary definition.<sup>4</sup> For example, does ADR properly include Negotiation? On one hand, one might say “Yes” because negotiation theory underlies so much of the theoretical basis for consensual ADR processes. On the other hand, Negotiation also underlies much of deal-making, contract formation, and various other forms of private ordering that would never describe themselves as part of dispute resolution.

My purpose in this article is not to resolve the question of who is properly included in or excluded from the field of ADR. For purposes of data analysis, I adopt the agnostic definitional stance of the AALS Directory. The AALS information is entirely self-reported. If a faculty member *thinks* he or she is in the field, the AALS lists him or her as being in the field. That means that the numbers included in the analysis below may be inflated (for example, because some people inappropriately included themselves as being in the ADR club even though its founding members would say they do not belong). Or the numbers may understate the size of the field (for example, because the survey that leads to listing in the AALS directory may not reach all of those who actually teach in the field).

As of 2007–2008, 569 different faculty members list themselves as being engaged in ADR. Not all of them are tenured or tenure-track. Regrettably, from a research perspective, the AALS directory information does not easily or reliably distinguish those who are tenure-track from those who are not.<sup>5</sup> To be clear, when I say that it is regrettable that the directory does not distinguish between tenure-track and non-tenure-track faculty, it is not because I think the distinction is a proxy for quality. If anything, I think we generally overstate the distinction between full-time teachers who have tenure and those who never will. Having data distinguishing tenure-track

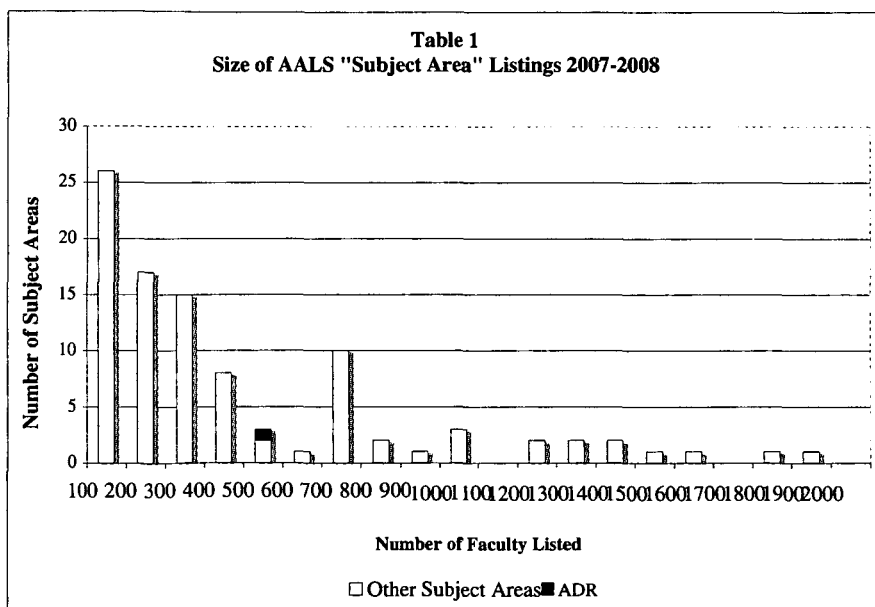
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<sup>4</sup> Even within the numerous sub-components of ADR, we see definitional struggles. See, e.g., Michael L. Moffitt, *Schmediation and the Dimensions of Definition*, 10 HARV. NEGOT. L. REV. 69 (2005) (describing and categorizing the contours of the definitional arguments related to mediation).

<sup>5</sup> At least one empirical analysis of AALS Directory data used faculty members’ titles as a proxy for the faculty member’s tenure-track or non-tenure-track status. Deborah Jones Merritt & Barbara F. Reskin, *Sex, Race, and Credentials: The Truth About Affirmative Action in Law Faculty Hiring*, 97 COLUM. L. REV. 199, 209–10 (1997). On balance, I chose to include everyone in the AALS Directory in my data set because I wanted to capture as full a picture of the field as I could. This is because I am confident that a significant portion of law schools’ ADR activity is taking place beyond law schools’ tenure-track faculties.

from non-tenure-track would, however, be interesting to analyze because it might tell us something about the forms of different schools' long-term commitments to the field.

To the extent that one can generalize, ADR appears to be about average in size—perhaps somewhat above average—when compared with the most commonly identified legal sub-disciplines. In 2007–2008 the AALS Directory provided break-out information on ninety-six different “Subject Areas.”<sup>6</sup> They range in size from just over 1800 listed members (Constitutional Law) to two listed members (Forensic Medicine). The average number of members in these Subject Areas is 399.<sup>7</sup> See Table 1 for the distribution of faculty among the different Subject Areas. Subject Areas with roughly the same size as ADR (which ranks as the 25th largest Subject Area, by number of listings) include Administrative Law, Civil Rights, Comparative Law, Environmental Law, Intellectual Property, and Federal Taxation.<sup>8</sup> Therefore, to the extent AALS membership numbers are an indication of law school activity, ADR appears to be squarely mainstream.



<sup>6</sup> I do not have information about how AALS decides whether to include a particular topic on this list.

<sup>7</sup> The average number of listings in 2007–2008 was 399.3; standard deviation 427.5; and median 220.5.

<sup>8</sup> Each of these “Subject Areas” includes membership numbers within one hundred of ADR’s membership, in one direction or the other.

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The ranks of those teaching ADR are increasing, but the increase is not as rapid as it once was. Four decades ago, only a tiny number of law schools offered even one course in materials that would today be categorized as ADR. Three decades ago, the effects of the Pound Conference were only just beginning to ripple through the legal academy.<sup>9</sup> Two decades ago, the American Association of Law Schools Section on Dispute Resolution had only been in existence for a handful of years.<sup>10</sup> Sometime during the last academic generation or two, ADR went from virtually nothing to an average-sized area of legal study.

Whatever Big Bang<sup>11</sup> occurred during those early decades, the rate of expansion has not continued in the recent past. See Table 2 for precise numbers of individual ADR faculty listings in the AALS Directory of Law Teachers. In the past decade, ADR faculty listings have increased by about a hundred—an average annual increase of just under 2.24%.<sup>12</sup> Having precise data for only three time periods makes it difficult to say anything about trends with statistical confidence.<sup>13</sup> Still, these data suggest strongly that in the past decade, the field has neither been exploding with exponential growth, nor collapsing in importance, to the extent sheer numbers are a proxy for either of those things.

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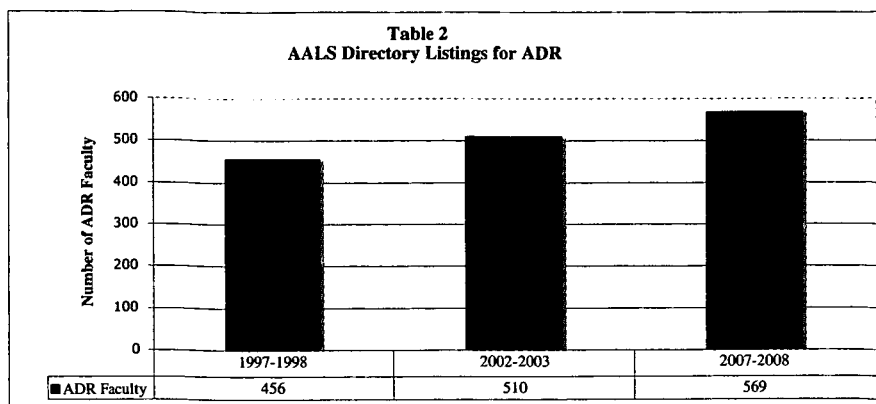
<sup>9</sup> See Frank E. A. Sander, *Varieties of Dispute Processing*, 70 F.R.D. 111 (1976). From Sander's observations came the vision of court-affiliated ADR programs known under the umbrella of "Multi-Door Courthouse." For details (and clarification that the now well-known term came from a journal reporting on the conference, rather than from Sander himself), see Michael L. Moffitt, *Before the Big Bang: The Making of an ADR Pioneer*, 22 NEGOT. J. 437 (Oct. 2006).

<sup>10</sup> The petition to create the ADR Section of the AALS was filed in 1982. See James B. Boskey, 55 The Fourth R (Nat'l Assoc. for Mediation in Educ., Amherst, MA), Feb.-March 1995, available at [http://www.creducation.org/resources/4thR\\_1995\\_v55\\_Boskey.pdf](http://www.creducation.org/resources/4thR_1995_v55_Boskey.pdf).

<sup>11</sup> For a brief survey of possible "big bang" moments, all of which occurred within a handful of years between 1976 and 1984, see Menkel-Meadow, *supra* note 1, at 1; see also Moffitt, *supra* note 9.

<sup>12</sup> The precise figure is:  $(569/456)^{(1/10)} - 1 = 2.2386$ . I wish I had access to data about the growth rates of other subject areas within the legal academy. Regrettably, collecting those data using the methodology I adopted for studying ADR faculty would have been prohibitively time-consuming.

<sup>13</sup> For a variety of reasons, we should be hesitant to conclude that the AALS data yield a conclusive answer to the question of whether the field is growing. The data are self-reported, and their coverage cannot be complete. However, whatever the bias created by this self-reporting, it would be consistent throughout each of the three time periods under observation.



Knowing that the ranks of law professors have expanded at this rate over the past decade leads to a question about how this compares with trends in the larger field of ADR. It would be interesting to know if we in the legal academy are in sync with the field's development in practice—or alternatively, if we are lagging behind, galloping ahead of, or are otherwise disconnected from its trends.

One data-driven proxy I could imagine for comparing practitioners' activities in the area is membership in the ABA's Section on Dispute Resolution.<sup>14</sup> Table 3 details the ABA Section's membership totals (and the composition thereof) during a time period roughly corresponding to the past decade.<sup>15</sup> Attorney membership has gone up considerably faster than the rate of increase among faculty over the past decade, while non-attorney membership has remained flat. Student interest also grew quickly through the 2004 membership measurement, and then exploded. (Further research revealed that the ABA Section did away with membership fees for students between 2004 and 2009, and I am confident asserting that this fact played a role in the dramatic increase in students' membership numbers.) Once I remove the distorting student numbers from the ABA Section membership,

<sup>14</sup> The other possible measure I thought to use regarding activity in the field was membership in the Association for Conflict Resolution. I believe that they are the largest professional organization in the United States focused on ADR. My efforts to gather membership figures from ACR were unsuccessful, unfortunately. Two people who are prominently affiliated with ACR indicated to me that their membership has been "flat" in recent years. Neither provided specific data, however, and each attributed the flat membership figures to different causes.

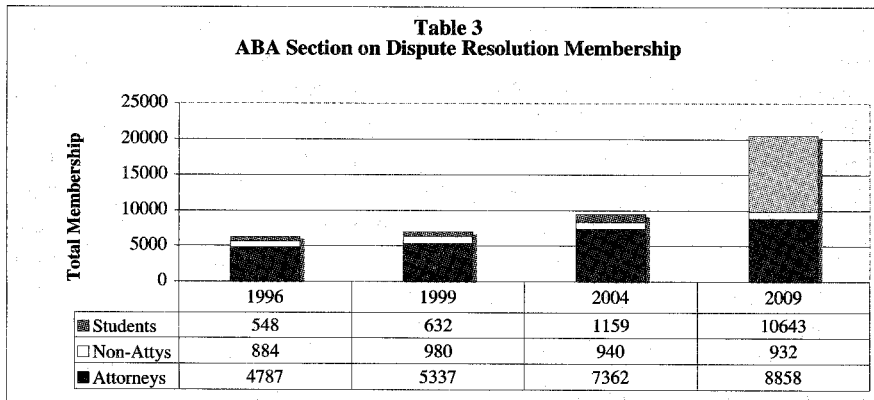
<sup>15</sup> The way the ABA Section of Dispute Resolution maintains its records is such that it does not directly correspond to the time periods captured by the AALS Directories. These are the closest approximations to which I had access.



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the average annual percentage increase over the last thirteen years (the time period for which I have data on the ABA Section) is approximately 5.61%.<sup>16</sup>

These data indicate that ABA Section membership is increasing at almost exactly twice the rate as the ranks of AALS-listed ADR faculty. I am left uncertain how much meaning to make of this. The difference in annual percentage increase is, on the one hand, quite large. And if the trend were to continue over many years, the miracles of compound interest would create an increasing disparity in the field's faculty-to-practitioner ratio, to the extent the AALS Directory and the ABA Section membership numbers are any indication. On the other hand, this measures only three points in time, all within ten years. I also have no information about how this ratio or this rate of change compares with other areas of legal study. I am reluctant, therefore, to conclude that we are dramatically out of step with the world of practice, at least in terms of academic attention.



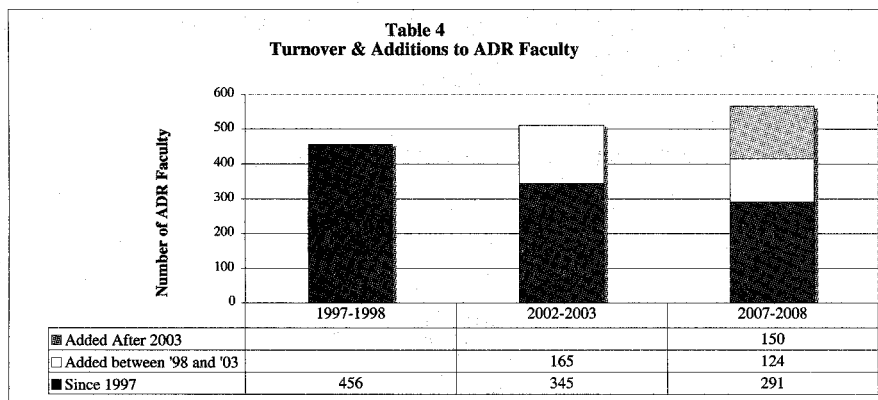
#### B. New Faculty and Turnover

The total numbers provided in Section II.A conclusively show that over the past decade, we have added new ADR faculty to the legal academy. What these total numbers do not show is exactly how many new members have been added. In other words, those summary data do not tell us specifically about additions, turnover, and attrition.

Roughly half of the faculty teaching ADR today were not teaching ten years ago. And about one-third of those who were teaching ADR ten years ago are no longer teaching ADR today.<sup>17</sup> See Table 4.

<sup>16</sup> The precise figure is:  $(9790/5671)^{(1/13)} - 1 = 5.6118\%$ .

<sup>17</sup> The precise figure is:  $1 - 291/456 = 36.2\%$ .



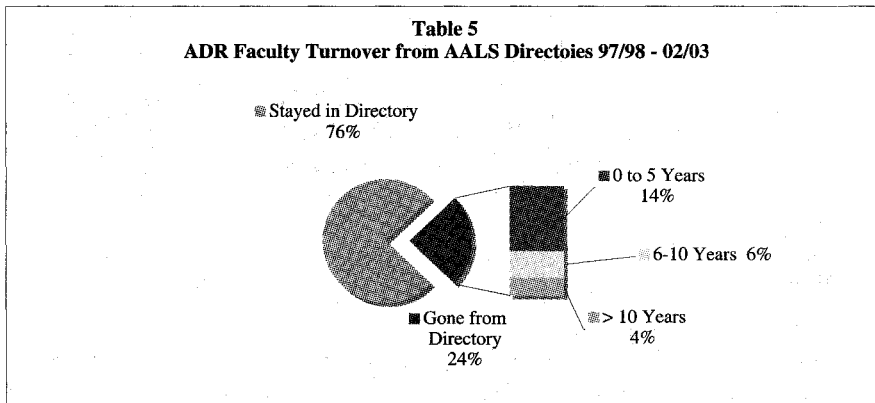
What conclusions do these data suggest? I do not know how this rate of attrition compares with the attrition rates of other areas of law school teaching. On first glance, at least, it does not seem remarkable. If one were to imagine that the average law faculty member teaches for about thirty years, and if the total number of law faculty members was reasonably constant, then seeing an attrition of about one-third in the span of a decade would seem about right.

I also wondered whether we could learn anything about the profile of those who left the field. Is it that the most experienced teachers are the ones leaving—for example, because they are retiring after long, prosperous, and happy careers? The data regarding those who were listed in 1997–1998 but who are not listed in the 2002–2003 database do not necessarily support this picture. Of those who left during the first five year interval in this study, about 60% had been teaching for fewer than five years. See Table 5 for details. Something else was going on, beyond the simple story that the most experienced ADR teachers were retiring, making way for more new ADR faculty.

If I were to hazard a guess, I would say that these data are likely a function of the number of non-tenure-track faculty in ADR teaching. Although I do not have specific data, I strongly suspect that ADR is a field in which non-tenure-track faculty continue to play a significant role in meeting law schools' curricular needs. I further would guess that the average adjunct faculty member does not typically teach for as many years as tenure-track faculty members. Instead, I would think it reasonably common that they would leave after fewer than five years, given the other likely demands on their time (and the comparatively meager pay typically associated with adjunct teaching). Because at least some non-tenure-track faculty appear in

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the AALS Directory, adjunct faculty numbers may explain this aspect of the turnover in ADR teaching.



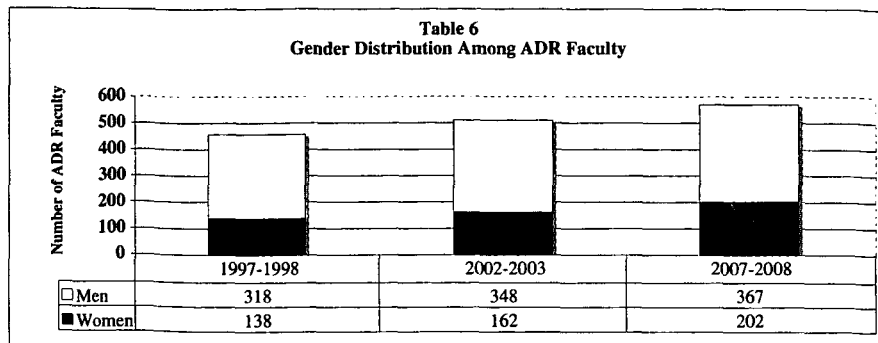
### C. Gender

Women make up approximately one-third of the faculty who teach ADR, according to the listings in the AALS Directory of Law Teachers. This figure is similar to the overall percentage of women in the legal academy.<sup>18</sup>

For those of us involved with the field, this percentage may be surprising. Prominent scholars in our field appear, at least anecdotally, to be roughly balanced between men and women. For at least the past several years, participation in AALS Section on Alternative Dispute Resolution committees has been very balanced in terms of gender. The Section's Chair has alternated between male and female each year for many years, much like the seating arrangements at formal dinner parties. And so, it would be quite reasonable for a casual observer to infer that the population of ADR faculty in law schools is more balanced than at least the current AALS information suggests.

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<sup>18</sup> See Marjorie E. Kornhauser, *Rooms of Their Own: An Empirical Study of Occupational Segregation by Gender Among Law Professors*, 73 UMKC L. REV. 293, 302 (2004) (reporting that in 2002–2003, women made up 31.8% of law faculties). I have not seen data for 2007–2008.



The gender balance picture may be changing. As is clear from Table 7, the percentage of women teaching ADR increased slightly in each of the three time periods I studied, moving from 30.3% to 31.8% to 35.5%.<sup>19</sup> The small number of years for which I collected data, however, cautions against making too much meaning out of trends at this scale.

<sup>19</sup> A different empirical look at the gender composition of law faculties paints a somewhat different picture of ADR faculty in law schools. Marjorie Kornhauser describes ADR, in passing in a 2004 article, as being a field that was previously primarily female, but was becoming more gender balanced. In her words, “ADR’s shift away from a female identification was accompanied by increased masculinity as the subject became a more popular course and grew closer to the core of law.” *Id.* at 311. I am unable fully to account for the difference in the empirical pictures Professor Kornhauser and I describe. The only obvious methodological difference between us, as far as I can tell, is that she filtered her data to include only faculty with apparent tenure-related appointments, while I left all AALS-listed faculty in my database. If that difference causes the significant discrepancy in our gender data, that would suggest that a great percentage of adjunct or non-tenure-track ADR faculty are men. Supporting that hypothesis is my anecdotal observation that adjunct faculty at law schools with which I am familiar are overwhelmingly male.

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<b>Table 7</b> <b>Change in Gender Distribution</b> <b>of ADR Faculty in AALS Directories</b>			
	1997–1998	2002–2003	2007–2008
Total	456	510	569
Women	138 (30.3%)	162 (31.8%)	202 (35.5%)
Men	318 (69.7%)	348 (68.2%)	364 (64.5%)
Total removed from Directory		111	95
Women		38 (34.2%)	30 (31.6%)
Men		73 (65.8%)	65 (68.4%)
Total Added to Directory		165	154
Women		62 (37.6%)	71 (46.1%)
Men		103 (62.4%)	83 (53.9%)

A close look at the attrition numbers reveals that women appear to be leaving the field (or at least the AALS Directory listings) in a proportion that parallels their percentage of the field. The change in the overall percentage of women is coming, therefore, from new additions to the ranks of the faculty, rather than from gender-imbalanced attrition. See Table 7 for details. Unfortunately, with only three time periods, we cannot know with confidence whether these trends are likely to continue.

Because the data I collected permit analysis at the level of individual faculty members, rather than just in the aggregate, we can also learn something about gender distribution *within* the field. Appendix B provides regression information for the four major ADR courses. Of interest for this sub-section, female ADR teachers are 98.3% more likely than male ADR teachers to teach Mediation, 32.4% more likely to teach Negotiation, and 10.1% more likely to teach an ADR Survey course. They are, however, 87.9% less likely to teach Arbitration than male ADR teachers.

Marjorie Kornhauser's empirical study of the composition of law faculties provides support for the idea that law school courses commonly divide along gender lines.<sup>20</sup> The dynamic she calls "gender distortion" is present (and growing) in a great percentage of law school classes, even as the ranks of female law professors increases.<sup>21</sup> The data I collected strongly suggest that the same dynamic is occurring in at least some of ADR's component courses.

I was personally shocked to see some of these numbers about the relationship between gender and the ADR courses a faculty member is likely to teach. My anecdotal and personal experiences caused me to imagine a different reality. Most of the scholars I think of immediately when I think of Arbitration are women. I spend most of my time researching Mediation. All four of the faculty from whom I learned Negotiation were men. My AALS dataset, however, is unambiguous on the question of gender and the ADR course a faculty member is likely to teach. My personal experiences have apparently been atypical.

#### D. Experience

*"I am older than I once was, younger than I'll be, that's not unusual."*<sup>22</sup>

I am more experienced (and older) than I once was. I trust that the same is true of each individual ADR faculty member listed in the AALS Directory. When I began this research, I was less certain about whether we, as a field, are more experienced than we once were. A modicum of good sense and propriety caused me to refrain from collecting and analyzing data about individual faculty members' self-reported ages. But the AALS form invites faculty members to list their years of teaching experience, and from those data, an interesting picture emerges.

One piece of the picture comes from the current snapshot of those teaching ADR in law schools. The headline is that we are, on average, quite young (or at least relatively junior in our teaching experience). The AALS form does not ask faculty to specify the exact number of years they have been teaching. Instead, faculty are invited to indicate that they have been teaching "1-5 years," "6-10 years," or "more than 10 years." See Table 8 for the details of ADR faculty members' teaching experience. Roughly half of

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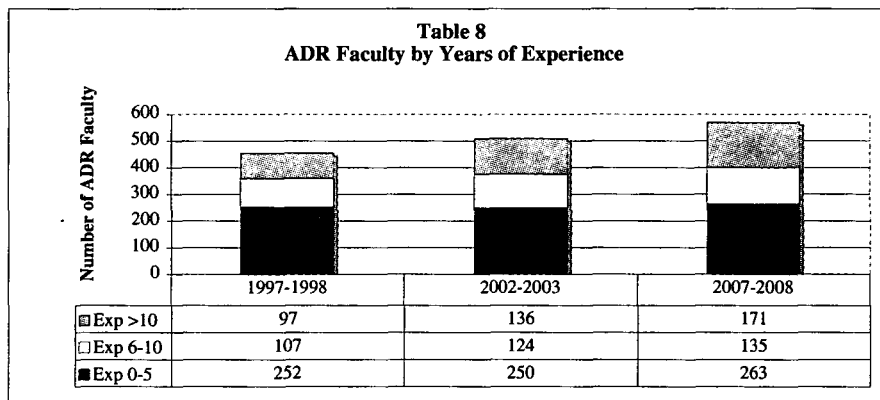
<sup>20</sup> *Id.*; see also Merritt & Reskin, *supra* note 5, at 258-59.

<sup>21</sup> Kornhauser, *supra* note 18, at 311.

<sup>22</sup> PAUL SIMON & ART GARFUNKEL, *The Boxer, on BRIDGE OVER TROUBLED WATER* (Columbia Records 1970).

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those teaching ADR in law schools, according to the AALS Directory, have been teaching for fewer than five years. I do not have comparative data, but my very strong sense is that other fields' profiles would indicate a more experienced group of faculty.<sup>23</sup>

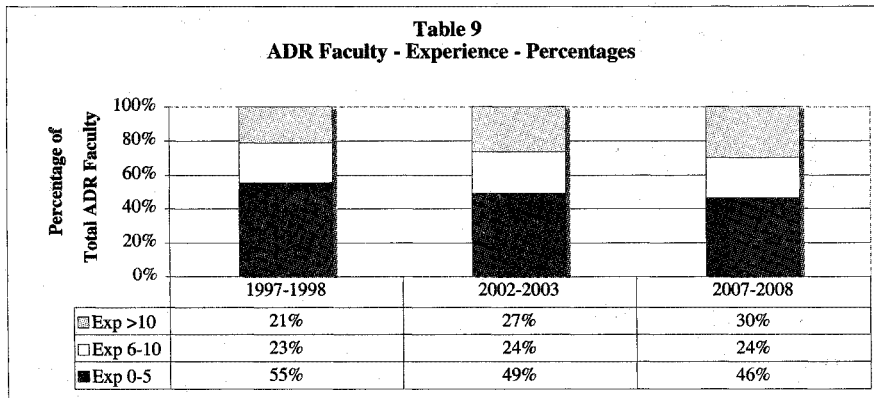


The second picture that emerges from the AALS data is that the field is becoming more experienced. This is illustrated more clearly, perhaps, by examining the proportions of the population of ADR faculty falling in each of the three experience categories. See Table 9. In brief, it appears that at least during the three time periods I studied, an increasing percentage of faculty have been teaching for more than ten years, and a decreasing percentage are new to the field.<sup>24</sup>

<sup>23</sup> As I indicate above, I also suspect that ADR is a more heavily adjunct field than many others. To the extent that is true, and if adjuncts have less teaching experience than tenure-track faculty on average, we would expect to see other fields' experience profiles weighted more heavily toward those with more years of experience.

<sup>24</sup> If ADR is comparatively younger than many other subject areas within the law, this might explain the trend toward concentration at the more experienced teaching levels. In essence, we may now be "catching up" to where other legal disciplines have been for some time.

**Table 9**  
**ADR Faculty - Experience - Percentages**



It certainly seems reasonable that the number of faculty with 0–5 years of experience would outnumber those with 6–10. Some new faculty will decide that teaching law is not for them. Some new tenure-track faculty will be invited to find other careers shortly before the date when tenure would normally be granted. And to the extent that the AALS data capture non-tenure-track faculty, it is reasonable to imagine that some adjunct faculty members will, despite their positions' lavish pay, decide that five or fewer years is enough. I wish that I had comparative data for other subjects, but I do not suspect ADR is unique in at least this regard.

As with gender, the dataset I collected also permits an analysis of the role experience plays in the likelihood that an ADR faculty member will teach one course or another. For most of the ADR courses, experience plays no statistically significant role.<sup>25</sup> The one prominent exception to this is Arbitration. Faculty who have more than ten years of experience teaching are more than 100% more likely to teach Arbitration than other ADR faculty.<sup>26</sup> Recall also the evidence from Section I.C that male ADR faculty are about 90% more likely to teach Arbitration than female ADR faculty. The resulting picture of those ADR faculty members who teach Arbitration is surprisingly homogenous.<sup>27</sup>

<sup>25</sup> There is a modest (12.812%) likelihood of teaching an ADR survey course among those with 6–10 years of teaching experience. *See infra* Appendix B.8.

<sup>26</sup> *See infra* Appendix B.9. Coefficient 0.341, P-value = 0.003, Percent Change in Likelihood 103.848.

<sup>27</sup> On the topic of homogeneity, I wish very much that I had collected and analyzed data about the race or ethnicity of ADR faculty as well. In my initial data collection phase, I was using the AALS Directory Alphabetical List of Teachers—a list from which it is not possible to determine whether a faculty member would self-describe as being a minority. I was disappointed not to be able to learn more about the role of race or



## FOUR VISIONS OF THE FUTURE OF ADR IN LAW SCHOOLS

### *E. ADR Courses Being Taught*

To get a snapshot of the ADR courses being offered in law schools, one could either ask the faculty what they are teaching, ask the schools what is being taught at their schools, or both. In a world of full and perfect response rates and data collection, these two avenues for painting a curricular picture would yield the same result. In practice, each of these approaches yields an accurate, but partial and somewhat different, picture.

Included in each faculty member's listing in the AALS Directory of Law Teachers are the courses he or she teaches. Among the complications (and benefits) of this open-ended self-reporting system is the fact that the responses are not constrained to a limited set of choices. The data, therefore, in their initial form, paint a picture of the tremendous diversity of labels attached to different ADR courses.

One challenge is that having dozens of slightly different names for courses that are, in all likelihood, substantially similar risks painting an inaccurate picture of law schools' ADR curricular offerings. In analyzing the data, therefore, I used my judgment about how best to treat courses with similar, but slightly different titles. For purposes of the final dataset, for example, I wound up treating "ADR" as an umbrella for a considerable number of courses with names that seemed at least reasonably synonymous. Courses called "Private Justice: The Law of ADR," "Dispute Resolution Practices & ADR," "Varieties of Dispute Resolution," "Conflict and Dispute Resolution," "Dispute Resolution, Negotiation, Mediation, and Arbitration," and "ADR Law Policy and Practice" all appear as simply "ADR" courses in my database. It is possible, of course, that a class called "ADR and Negotiation" is substantively identical to a course offered elsewhere called "Negotiation," but I chose to default to the generic ADR label whenever the course title suggested coverage of multiple dispute resolution mechanisms. In that way, I could at least derive some sense of how often schools are offering courses aimed precisely at one dispute resolution method. It is possible that I over-clustered the data. But to the extent I made this error, I at least made it consistently over all three time periods in my analysis.

Table 10 provides information about the number of faculty who report themselves as teaching various ADR courses. Not surprisingly, the four most common ADR offerings are an ADR survey course and specialized courses

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ethnicity within the ADR academy, but I saw no workable means of collecting the data. Only at the very end of the editing process for this article did I discover that the AALS publishes a separate list that lists the names of Minority Law Teachers. I regret the omission from this empirical study and wish that I had discovered the availability of these data in time to incorporate them into my analysis.

on each of Negotiation, Mediation, and Arbitration. This picture of the most commonly-taught courses is largely consistent with the picture painted by the ABA/University of Oregon database as well.

<b>Table 10</b> <b>Number of Faculty Teaching ADR Courses (AALS Data)</b>				
Courses <sup>28</sup>	1997– 1998	2002– 2003	2007– 2008	Avg. Annual % Change 1997– 2007
ADR	291	316	342	1.6%
Negotiation	72	76	92	2.5%
Mediation	46	51	66	3.7%
Arbitration	65	57	52	-2.2%
Mediation Clinic	13	13	21	4.9%
Int'l DR	4	8	9	8.4%
ADR in Workplace	2	3	7	13.3%
Labor Arbitration	16	10	6	-9.3%

Two caveats to the information presented in Table 10 are important to mention. First, these AALS data almost certainly understate the number of faculty teaching in a Mediation Clinic. About one-hundred faculty who appear in the ADR AALS Subject Area list themselves as engaging in “Clinical Teaching,” without specifying that they teach an ADR clinic in particular. I did not, therefore, include them as teaching a Mediation Clinic. Other sources, however, make it plain that the number of mediation clinics in law schools is far greater than the AALS data suggest. For example, the ABA/Oregon database lists at least thirty-six schools with active mediation

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<sup>28</sup> These are not the only ADR courses being taught by faculty in the AALS Directory. For example, two or three faculty specifically list courses in Commercial Arbitration in each of the time periods. There were also some specialized international courses for which only a few instructors used similar enough course titles that I felt comfortable calling them the same thing. As a result, those offerings do not appear on this table, which summarizes only the most commonly-occurring course names in the AALS list.

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clinics.<sup>29</sup> It would be reasonable, therefore, to guess that many of these faculty teach a Mediation Clinic, despite the more ambiguous AALS listing.

Second, Table 10 almost certainly understates the frequency with which international ADR courses are being offered. International Negotiation, International Commercial Arbitration, and International Dispute Resolution all were listed far more often in the ABA/Oregon database than the AALS data would have predicted. I suspect strongly, although I have no data to support my suspicion, that the explanation for this difference lies in the proportion of adjunct faculty teaching international ADR courses. If, as I suspect, it is adjuncts who more commonly teach these specialized courses, then it would make sense that these courses might not appear in the AALS Directory, even though the courses are part of the law school's curriculum.

#### *F. Number of ADR Courses in Faculty Course Loads*

It would be interesting to know how much ADR teaching those who are listed in the AALS Directory actually do. Unfortunately, the available data paint a picture that is, at best, incomplete. We know from these data who teaches what courses. We cannot, however, distinguish between a faculty member who occasionally teaches a single, enrollment-limited course on ADR and a faculty member who teaches multiple sections of an ADR course every semester. All we know from these data are the names of each of the courses a faculty member teaches.

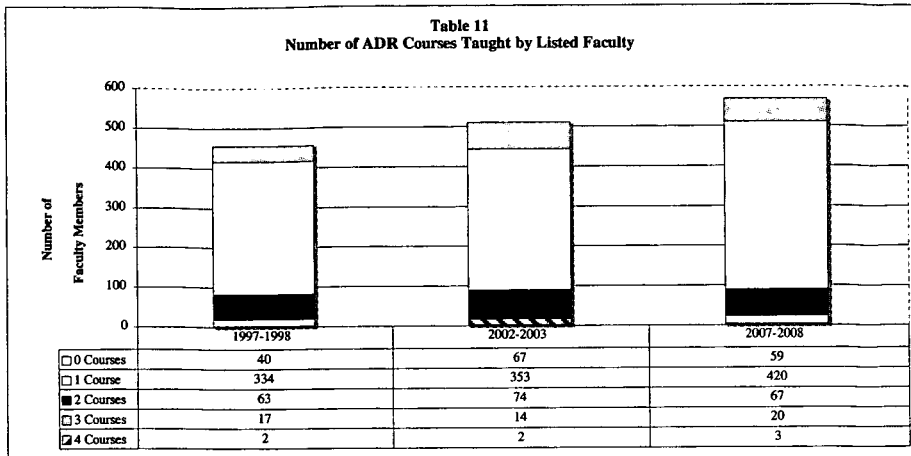
The data conclusively show that few ADR faculty teach more than one different ADR course. See Table 11 for the breakdown of ADR faculty by the number of ADR courses they teach.<sup>30</sup> Many faculty listed in the AALS as teaching ADR report either one or zero ADR courses. The idea that one would be listed as teaching ADR, and yet have zero ADR courses, is not quite as senseless as it may initially seem. The AALS snapshot asks about courses one is teaching that year, and for one reason or another, a person who is otherwise engaged in ADR might not be teaching in the field in a given year. The vast majority of those who teach more than one course teach two

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<sup>29</sup> The ABA/Oregon database does not include responses from 100% of law schools, so this number probably still understates the level of activity.

<sup>30</sup> I compiled these data by looking at the complete list of courses and then counted, for each faculty member, the number of courses I determined to be "ADR Courses." So, for example, a professor who teaches a Negotiation course, an Arbitration course, and a Civil Procedure course would be counted as teaching two ADR courses. A professor who teaches a Mediation Clinic and three Family Law courses would be listed as teaching one ADR course. And so on.

courses, with fewer than two dozen teaching three, and only a few professors teaching four different ADR courses in any given year.



I discern no particularly noteworthy trends in the data over the past ten years, with the possible exception that the tendency for faculty to teach only one ADR course appears to be persistent, and perhaps increasing. The total number of faculty teaching two or more different ADR courses has remained quite steady.<sup>31</sup>

Finally, a careful look at the data reveals that gender and teaching experience are variables associated with the likelihood that a law faculty member will teach more than one ADR course. Male ADR faculty are more likely than their female counterparts to be listed as teaching multiple ADR courses. The same is true of ADR faculty who have teaching experience of 6-10 years.<sup>32</sup> To be candid, I do not have any guesses about why either of these dynamics would be true.

I found the information about the small percentage of ADR faculty who teach multiple ADR courses surprising, particularly when juxtaposed with the data suggesting that ADR Survey courses are the most commonly offered ADR course in law schools. Survey courses would almost certainly include Negotiation, Mediation, and Arbitration, and most likely other topics as well. Any faculty member who teaches such a course should be capable of teaching specialized courses in at least some of those topic areas. And yet the data strongly suggest a substitution effect of at least some magnitude: If a

<sup>31</sup> The figures have gone from 82 in 1997-1998 to 90 in 2002-2003 and in 2007-2008.

<sup>32</sup> See *infra* Appendix B.5 for more details.

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faculty members teaches ADR course A, they are far less likely to teach ADR course B. I suspect that the picture of the average ADR faculty member is, therefore, different than one probably finds in other subject areas. I would guess—but confess that I do not have data to support this assertion—that faculty who teach Environmental Law are likely to teach different Environmental Law courses, and that faculty who teach Tax probably teach more than one Tax course. The inevitable specialization that accompanies any area of legal study makes these arrangements sensible. At least according to the AALS data, however, this appears not to be the case for ADR faculty.<sup>33</sup>

##### *G. Non-ADR Courses Being Taught by ADR Faculty*

Given the relatively small number of ADR faculty who teach multiple ADR courses, it is reasonable to assume that ADR faculty are also teaching other law school courses. Alternatively, I suppose, those who are less imperialistically inclined might say that it is reasonable to assume that a number of law faculty who teach non-ADR courses also teach at least one ADR course.

Faculty listed in the 2007–2008 AALS Directory of Law Teachers who list themselves as ADR teachers taught several hundred different non-ADR courses. Appendix C provides a list of the thirty-two non-ADR courses mostly commonly taught by faculty who also teach ADR. All of the commonly-required courses (Civil Procedure, Legal Ethics, Contracts, Legal Research and Writing, Torts, Constitutional Law, Criminal Law, and Property) appear prominently on the list. Similarly, many of the courses that appear on the Bar exam (Evidence, Administrative Law, Commercial Law, Corporations, and Trusts & Estates) appear on the list of commonly taught courses for ADR faculty. The list also includes topics that are at least intuitively and thematically related to ADR. For example, Labor Law, Trial Advocacy, Family Law, Employment Law, International Business Transactions, and Interviewing & Counseling all have at least two dozen ADR faculty teaching them.

A more detailed examination of the AALS Directory information about ADR faculty provides insight into the relationships between what ADR course a faculty member teaches and what other courses that faculty member is likely to teach. For example, Arbitration professors take on a fairly unique

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<sup>33</sup> Again, the potential role of adjuncts in teaching ADR may explain at least part of this result. If adjuncts are prominent, if they are listed in the Directory, and if they are hired to teach only one course in a year, it would help to explain why most ADR faculty teach only one ADR course.

profile when compared with their other ADR colleagues.<sup>34</sup> For example, compared with other ADR faculty members, those who teach Arbitration are overwhelmingly more likely (601% more likely) to teach Labor Law, and Arbitration professors are more likely (97% more likely) to teach Contracts. These results make some intuitive sense if one imagines that faculty members often have some common theme spread across their teaching packages. Arbitration plays a foundational role in Labor Law, and arbitration clauses present common and important questions in contract disputes. For what I assume are parallel reasons, those who teach arbitration are significantly less likely to teach courses in which arbitration plays a more minor role. Family Law, for example, presents virtually no conspicuous window into Arbitration practice. It is little surprise, therefore, to see that Arbitration professors are about 80% less likely to teach Family Law than other professors listed in the ADR directory. The data also tell us that Arbitration professors are much less likely to teach Legal Ethics than ADR professors who teach something other than Arbitration. I will not hazard a guess about why that might be, though I am confident that a less restrained author could conjure a joke in here at the expense of Arbitration professors.

Not all of the negative correlations related to those who teach Arbitration are as immediately intuitive, however. Those who teach Arbitration are more than 75% less likely to teach Civil Procedure than other ADR faculty, even though both Arbitration and Civil Procedure describe the structures within which disputants engage in pleadings, discovery, adjudication, and possibly appeal of decisions aimed at resolving disputes.<sup>35</sup> Furthermore, non-binding arbitration has become integral to the functioning of many courts' civil procedure systems.<sup>36</sup> Still, these observations about the link between arbitration and civil litigation amount to little more than my argument for why I wish the data were different than they actually are. The data say, quite plainly, that Arbitration professors are not as likely to be teaching Civil Procedure as other ADR faculty.

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<sup>34</sup> For details on the Arbitration analysis, see *infra* Appendices B.2 and B.9.

<sup>35</sup> Some of us have even suggested that the civil litigation system might have some things to learn from some of the customizing aspects of arbitration. See Michael L. Moffitt, *Customized Litigation: The Case for Making Civil Procedure Negotiable*, 75 GEO. WASH. L. REV. 461 (2007); Henry S. Noyes, *If You (Re)Build It, They Will Come: Contracts to Remake the Rules of Litigation in Arbitration's Image*, 30 HARV. J.L. & PUB. POL'Y 579 (2007); Elizabeth Thornburg, *Designer Trials*, 2006 J. DISP. RESOL. 181.

<sup>36</sup> For a critique of non-binding, mandatory, and court-annexed arbitration programs, see Amy J. Schmitz, *Nonconsensual + Nonbinding = Nonsensical? Reconsidering Court-Connected Arbitration Programs*, 10 CARDOZO J. CONFLICT RESOL. 587 (2009).

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Faculty who teach Mediation present a very different curricular profile than those who teach Arbitration. Those who teach Mediation are far more likely (more than 157% more likely) than other ADR professors to teach Interviewing & Counseling as well.<sup>37</sup> I suspect that the explanation for this is that these courses have similar baseline skill sets they aim to develop in students. By contrast, Mediation professors are far less likely to teach Contracts (-88.4%) or Labor Law (-92.6%) than other ADR faculty. I can easily understand why Mediation professors might not be Contracts professors, as those engaged in contract formation use mediators only rarely.<sup>38</sup> I was surprised about Labor Law, however, probably because of some egocentric bias of some sort. A considerable portion of my mediation practice these days involves mediating labor contracts. To learn that I might be an oddity in this respect was surprising. To be fair, I do not actually teach Labor Law, and so even my own teaching package supports the suggestion that Mediation professors are unlikely to teach Labor Law. Still, I would have guessed that we would see a closer fit between these thematically linked courses. And I certainly would not have guessed that teaching Mediation makes an ADR faculty member *less* likely to teach Labor Law than his or her ADR colleagues.

Data regarding those whose ADR teaching involves a survey or hybrid ADR course of some sort<sup>39</sup> include a number of different statistically significant findings, but none of the percentage changes in likelihood of teaching were nearly as high as those associated with Arbitration or Mediation. I suspect that this is at least in part a function of the sheer size of the population of faculty teaching ADR in this database. Regressions of Negotiation faculty's curricular packages show no statistically significant positive associations with non-ADR courses, and only a couple negative ones. Those who teach Negotiation are less likely to teach International Business Transactions (-88.9%) and Contracts (-43.9%). I was surprised to think that those who are teaching Negotiation are comparatively less likely to be teaching Contracts, as the end product of many legal negotiations is the creation of a contract. But again, I digress into describing a world that does not appear currently to exist, no matter how theoretically sensible it may be to me.

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<sup>37</sup> For details on the Arbitration analysis, see *infra* Appendices B.3 and B.6.

<sup>38</sup> For more on this prospect, see Scott R. Peppet, *Contract Formation in Imperfect Markets: Should We Use Mediators in Deals?*, 19 OHIO ST. J. ON DISP. RESOL. 283 (2004).

<sup>39</sup> Recall that this course title was a catch-all for courses that indicated more than one ADR method in the course title.

### H. School "Rank" and Reputation

Does a school's rank or reputation have any statistical connection to the likelihood that its faculty members teach ADR? I had heard, early in my career as a law professor, that certain types of courses are taught primarily at "elite" law schools, and I recall that Jurisprudence and Legal Theory were suggested as examples of such classes. Other courses, like Law Firm Management, I was told, were the kinds of things one would find only in non-elite law schools. I have no idea about the accuracy of the basic assertion that a school's reputation is correlated with the likelihood that the school will offer this class or that class. And I certainly do not know whether those specific examples are ones in which the asserted difference exists. But I was curious about whether teaching ADR was, in some way, linked with the "quality" of a law school.

The short answer is no, according to these data. Neither a school's overall *U.S. News* ranking nor its "peer scores" from other law professors has any correlation to the likelihood of its faculty teaching ADR.

Before I go any further, I have to acknowledge that the data upon which I relied for this part of the analysis comes, in part, from the annual *US News & World Report* rankings of law schools. Including these data risks suggesting that I believe the magazine's rankings are meaningful, or even reliable. Like many of my colleagues who have studied the rankings methodology used by *U.S. News*, I believe their rankings are neither. This is particularly true of the magazine's "overall" ranking, which is the product of a weighted formula that can most charitably be described as strange. Still, the rankings persist, and their importance is rarely denied even by their most staunch critics. With some reluctance, therefore, I include *U.S. News* data in this limited portion of the article.<sup>40</sup>

A count of ADR faculty members at each of the law schools shows very little relationship between a school's tier and its ADR faculty. If ADR faculty were clustered in the lower tier schools, one could imagine conjuring an explanation about the field being relatively young, and therefore not yet "established" enough for the more elite law schools. Or even less charitably, if ADR faculty were clustered in the lowest tier schools, one might wonder whether the field were of sufficient intellectual and academic rigor to "merit" a place in elite law schools. By contrast, if ADR faculty were clustered in elite law schools, one might wonder whether the field were so specialized, so costly, so theoretical, or so removed from the quotidian needs of practicing

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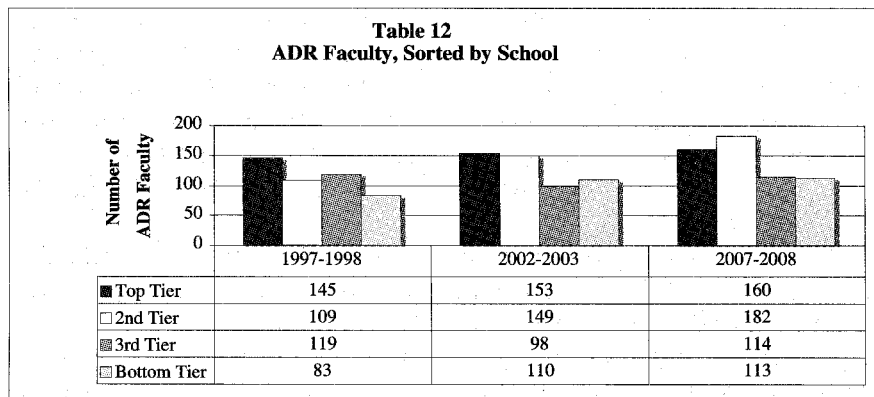
<sup>40</sup> See *supra* note 3, for a sampling of the criticisms of the U.S. News methodology.



#### FOUR VISIONS OF THE FUTURE OF ADR IN LAW SCHOOLS

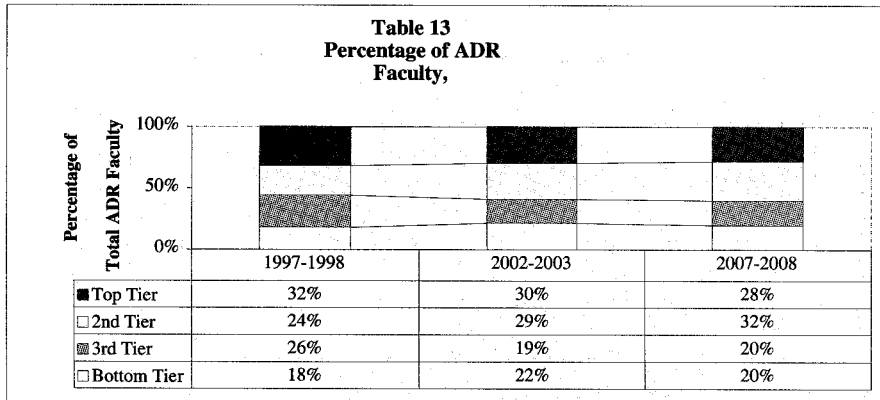
attorneys, that it would reasonably appear only in top-ranked schools where such factors may be less of a constraint on curricular offerings.

As it turns out, ADR faculty appear to be scattered across the *US News* “tiers.”<sup>41</sup> If anything, ADR faculty appear more likely to teach at schools in the upper two tiers, according to the magazine’s ranking methodology. See Table 12 for details.



We should be cautious about making too much meaning out of so few data points, particularly given the limited validity of the underlying ranking methodologies. To the extent that one were trying to say something about trends within these three years, however, the only dynamic that appears is that the majority of the growth within ADR appears to be in the second-tier of law schools (those ranked 50–100 in the *US News* overall ranking). See Table 13 for these percentage breakdowns.

<sup>41</sup> Based on schools’ “overall” rankings, *U.S. News* sorts law schools into “tiers.” The fifty top scoring schools are considered in Tier 1. The next 50 in Tier 2, and on down the line. Today, because there are almost exactly 200 accredited law schools, the Tiers translate roughly to quartiles.

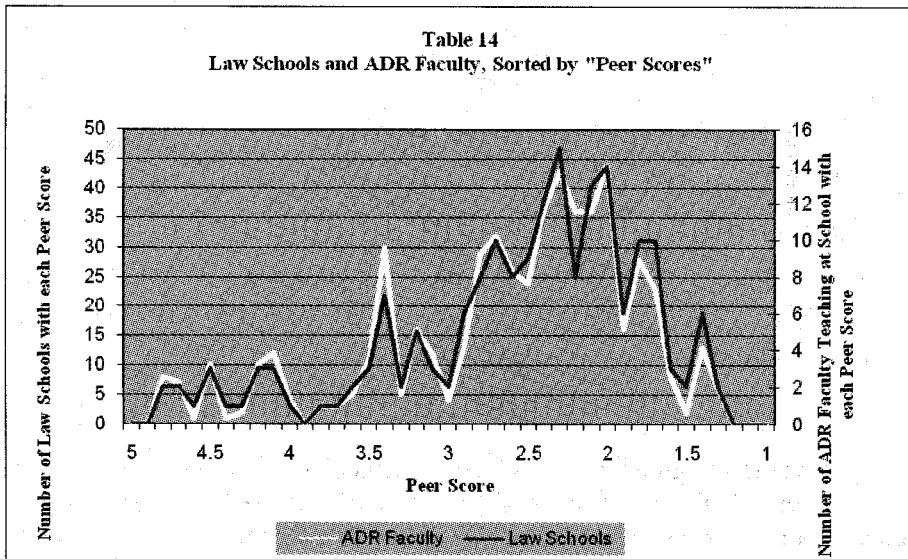


One would imagine intuitively that if a school's overall ranking were not linked to the likelihood of an ADR faculty member teaching there, its peer score would also show no relationship to the number of ADR faculty teaching there. The data appear to support that conclusion.

When I first plotted a histogram of the number of faculty members teaching at schools of each peer score, I was shocked (and frankly concerned) to see that the distribution was clearly skewed toward schools with peer scores relatively low on the absolute scale of 1 to 5. It then occurred to me, however, that these data would be meaningful only if I knew how many schools received each possible peer score. Table 14 presents two superimposed histograms: one showing the number of law schools that received each possible peer score, and one showing the number of ADR faculty teaching at schools at each possible peer score. The curves of these two data sets are almost identical. If a school's peer score were having an effect, I would expect to see the number of faculty curve bulge differently than the number of schools curve. Instead, factors other than reputation or ranking appear to be shaping the distribution of those teaching ADR.

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Table 14  
Law Schools and ADR Faculty, Sorted by "Peer Scores"



Do the data suggest anything about ADR faculty and the peer scores of the institutions in which they teach? In brief, probably not much. See Table 15 for a regression of ADR faculty members' institutions' peer scores.

The one figure that stands out is that faculty who have been teaching ADR for more than a decade appear to work at schools with considerably higher peer scores than their ADR colleagues who have been teaching for fewer years.<sup>42</sup> Several possible conditions could explain these results. Maybe this is an indictment of the academic pedigree and scholarly achievement of the younger generation of ADR scholars. I note, however, that today's students are almost never as good as their professors remember the cohorts to which *they* belonged when they were students. (Imagine here a senior professorial rant accusing "whippersnappers" of any number of different failures.) I suspect these results are more likely to be a dynamic that appears in many subject areas within the legal academy. To the extent that ADR law faculty engage in school-hopping throughout their careers, my assumption is that the majority of those who make lateral moves are "hopping" to schools

<sup>42</sup> The other minor effect that appears in the data is a slightly negative coefficient for those who are listed in the most recent annual listing. This would suggest that the recent trend is toward finding ADR faculty at schools of lesser reputations. I discount the validity of this modestly negative number (-0.114) because of the statistical effects of the recent addition of a number of new law schools to the database. Rightly or wrongly, recently created or accredited law schools appear to have lower peer scores than those that are more well-established. And this winds up creating a potentially misleading coefficient.

of higher perceived quality. If this picture of school-hopping is accurate, then those who have been in the game longer would have hopped to comparatively better schools than those who are just starting their careers.

Finally, these data could also be explained if comparatively elite schools were different in the way(s) in which they handled tenure-track hiring and adjunct faculty hiring. If elite law schools began hiring ADR faculty earlier than comparatively less elite schools, their listed faculty would have more teaching experience. Alternatively, if elite schools hire fewer adjunct faculty members, or are less inclined to have them listed in the AALS Directory, the relatively shorter teaching careers of adjunct faculty would wind up producing data suggesting experienced faculty tend to teach at more elite institutions.

<b>Table 15</b>			
<b>Peer Scores of ADR Faculty Members' Schools (Ordinary Least Squares Regression)</b>			
	Coefficient	95% interval	Confidence
Intercept	2.618	2.505	2.731
Listed in 2002–2003 Directory	-0.102	-0.206	0.002
Listed in 2007–2008 Directory	-0.114	-0.216	-0.012
Gender (1 = female)	-0.084	-0.174	0.005
More than 10 Years Experience	0.316	0.215	0.418
6–10 Years Experience	0.077	-0.024	0.177
Number ADR Courses Taught	-0.001	-0.066	0.065

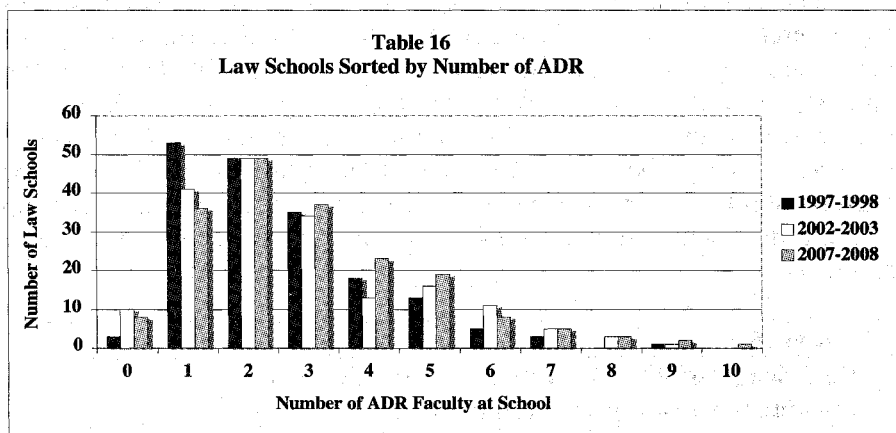
The quick conclusion on this section is that school ranks and peers' assessments of school quality appear to have little association with the likelihood that an ADR faculty member will teach there.

### *I. Distribution of ADR Faculty in Law Schools*

Faculty who teach ADR appear to be distributed across law schools without significant clustering. Table 16 shows the number of ADR faculty at each AALS-listed law school during each of the three years for which I

## FOUR VISIONS OF THE FUTURE OF ADR IN LAW SCHOOLS

collected data. The great majority<sup>43</sup> of schools have one to three faculty teaching ADR.



The small number of data points makes it difficult to discern a trend with any confidence. To the extent one can observe anything in this chart, it would be a slow shift to the right (an increase in the number of schools with more ADR faculty). Given the increase in overall numbers of ADR faculty listed in the AALS Directory, this result is entirely expected. (Essentially, the new ADR faculty had to go somewhere.) It appears that new ADR faculty have been distributed largely randomly, rather than being concentrated in schools that already had large ADR programs.

### III. FOUR VISIONS OF ADR IN LAW SCHOOLS

In each of the four sections below, I describe different possible models for how law schools' ADR offerings might be characterized—today and in the future. Each of these models has its compelling features; each has its drawbacks, and different models are almost certainly appropriate for law schools in different circumstances. My goal is primarily to categorize, or at least to provide mental images, to help describe that which is possible.

<sup>43</sup> In 1997–1998, 76.1% of schools had either one, two, or three ADR faculty listed in the AALS Directory. In 2002–2003, the percentage was 67.8%, and in 2007–2008, 63.9% of schools had one to three faculty listed in the ADR subject area.

### A. *Islands: Specialization at Only Some Schools*

One model of ADR's place within the legal academy would be for it to appear as a specialization at some number of law schools. Some law schools, in other words, may be *Islands of ADR*, sticking out above the sea of schools that do nothing remarkable with the field. Might we see a future in which some law schools decide to devote considerable resources to the field, while others give the topic comparatively less attention?

#### 1. *The Idea of ADR Islands*

No law school can be all things to all people, no matter how large it is. I would be surprised if there were *any* law school in the country that did not tell at least some differentiating story about itself—why it is different (presumably in some good way) from prospective students' alternatives. Some of the ways in which law schools seek to differentiate themselves focus on non-curricular aspects of the education ("We're inexpensive." or "We're nice." or "We're located near a beach."). Other differentiating features of schools focus more heavily on the kinds of offerings the school makes in one or more substantive areas. One school may tout its clinical program. Another may point to its international focus. Another may advertise its successes in public interest and public service work, and so on. Law schools have a number of different curricular and co-curricular options to which they can point as part of their distinctiveness.<sup>44</sup>

ADR is one of the areas of specialization to which some law schools currently point when they are describing their distinctiveness. The *U.S. News & World Report* annual list of law school rankings includes national rankings for nine different specialty programs, and ADR is one of those nine areas the magazine believes are common enough to merit national comparison.<sup>45</sup> The magazine's methodology for ranking specialty programs is highly questionable. I would certainly not equate a school's listing (or failure to be listed) among the top programs on that list as conclusive evidence of much of

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<sup>44</sup> Thanks, in part, to accreditation standards, I am not sure that law schools present truly differentiated models of education. I doubt that what passes for radical experimentation in the first year curriculum would even be distinguishable from a traditional first year curriculum by any but the most observant outsider.

<sup>45</sup> The specialty programs ranked separately by U.S. News are: Clinical Teaching, Dispute Resolution, Environmental Law, Health Law, Intellectual Property Law, International Law, Legal Writing, Tax Law, and Trial Advocacy. See Best Law Schools for 2009, U.S. NEWS & WORLD REPORT, available at <http://grad-schools.usnews.rankingsandreviews.com/best-graduate-schools/top-law-schools>.

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anything. But the list of specialties itself provides at least some support for the idea that those outside of ADR view ADR as a significant point of potential differentiation for a law school.

### 2. *What the Data Suggest*

A relatively small number of schools appears to have adopted an *Islands* approach to ADR. Of course, the very nature of the *Islands* model is such that one would not expect to find more than some small percentage of schools making a market play in this area. (If everyone is doing it, the fact that you are doing it does not make you distinctive.) Some law schools today would name ADR as one of the small number of areas in which they have a particular specialization.

If I were guessing, based on the data and anecdotal evidence, I would imagine that no more than two dozen law schools today would describe themselves as *Islands of ADR*. Some law schools have advanced degrees, certificate programs, or specialized dispute resolution journals. At least half a dozen law schools provide opportunities for students to receive advanced degrees focused on conflict or dispute resolution.<sup>46</sup> At least five law schools house journals focused on dispute resolution.<sup>47</sup> Eighteen law schools list themselves as offering Certificates in Dispute Resolution.<sup>48</sup>

The AALS data support the idea that *Islands*-style specialization is not widespread. If schools were truly sorting themselves into those that specialize in ADR and those that do not, we would probably expect to see a bimodal

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<sup>46</sup> I know of Master's or LLM programs at the following law schools: Marquette, Missouri, Pepperdine, and Oregon. Other schools self-report on the ABA/Oregon website as offering advanced degree programs in dispute resolution, although their websites appear to describe general LL.M.s in which one can presumably concentrate on ADR. These include Georgetown, Capital, and Northwestern. I suspect the same would be true of LL.M. programs at schools like Fordham and Cardozo. I make no claim that this list is exhaustive, and I apologize to any programs I have inadvertently omitted from this list.

<sup>47</sup> Journals devoted specifically to dispute resolution are published by Cardozo, Missouri, Harvard, Ohio State, and Pepperdine. Additionally, Willamette publishes a journal on "International Law & Dispute Resolution."

<sup>48</sup> Because certificates (unlike degrees) are almost entirely unregulated and non-standardized, we should be cautious about making too much of the presence or absence of certificates at law schools. Some of the most robust ADR programs in the country offer no certificate, and some of the programs that offer ADR certificates have little national reputation. The current list of certificate-granting institutions includes: Appalachian School of Law, Cardozo, Capital, Drake, Ohio State, Oklahoma City, Penn State, Pepperdine, Quinnipiac, Baltimore, Cincinnati, Maryland, Nebraska, Oregon, Texas, Washington, and William Mitchell.

distribution in a histogram showing schools sorted by the number of faculty at each school. Most schools would have a couple faculty members teaching ADR, and a small number would have a large number, with few or no schools in between.<sup>49</sup> Instead, as Table 16 illustrates, the distribution of ADR faculty appears to be largely random. As a result, most schools have one to three ADR faculty, and the entire distribution appears to be mostly linear.

This is one area in which it would be helpful to have more information about the people actually teaching ADR in law schools. In particular, I wish I knew how many of the faculty were tenure-track or in some other long-term, full-time professional relationship with their law schools. Adjunct faculty are enormously valuable for virtually every law school, and I am sure that adjunct faculty play an important role in teaching ADR as well. But to the extent a school is truly building a program it considers one of its small number of specializations, it is much easier to conceptualize that effort as involving multiple full-time, permanent members of its faculty. I would also imagine an *Islands* approach to involve faculty whose primary teaching responsibilities fall within ADR (as opposed to faculty who principally teach in some other area but occasionally teach an ADR course). Unfortunately, the AALS Directory data do not provide us with this level of detail.

The idea of the *Islands* model of ADR holds theoretical appeal. Some data (for example, the number of schools with advanced degree or certificate programs in Dispute Resolution) support the idea that some schools are pursuing an *Islands* model of ADR. But the data about the distribution of ADR faculty do not show ADR faculty to be highly concentrated. We are left, therefore, with an interesting—but partial—picture of law schools' efforts at ADR specialization.

### 3. Analogies to the *Islands* Model

Law schools have adopted an *Islands* model with respect to non-ADR areas of legal study, and we might learn something about the specialization process by looking to other areas as analogs.<sup>50</sup>

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<sup>49</sup> Specialty program rankings do *not* necessarily correspond with the idea that a school has adopted an *Islands* model of treating ADR. Still, a quick look at the size of ADR faculties at ranked schools, compared with those at unranked schools, suggests at least some relationship. Schools ranked among the top ten ADR programs in 2007–2008 have an average number of AALS listed ADR faculty of 5.5 (median 6, standard deviation 2.718). Schools not ranked in the top ten have an average number of 2.793 ADR faculty listed in the AALS Directory (median 2, standard deviation 1.802).

<sup>50</sup> Not every area of legal study presents itself as a likely candidate for the *Islands* approach. For example, students seeking to study Equine Law will undoubtedly find the



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One possible analog might be Tax. Every law school offers at least some courses in Tax. A relatively small number of law schools offer programs that permit their students to concentrate their studies in the area. The U.S. News & World Report annual rankings provide a separate listing for schools with Tax programs. Seven of the top ten law schools on the most recent Tax specialty program ranking offer an LLM or other advanced degrees specifically focused on Tax.<sup>51</sup> Several law schools publish specialized law journals focused on Tax.<sup>52</sup> Finally, the number of law faculty listed in the Tax "Subject Area" of the AALS Directory is roughly analogous to the number of law faculty who list ADR as their focus. In short, Tax may be a field with at least some of the same characteristics as ADR.

Another possible analogy to ADR might be Environmental Law. Every law school offers at least something related to the field, and some schools provide students with a broad set of curricular and co-curricular programming. Environmental Law appears on the list of specialty programs ranked by *U.S. News & World Report*. Some schools offer advanced degree programs focused on Environmental Law,<sup>53</sup> and several have specialized law journals focused on the area.<sup>54</sup> The number of faculty teaching Environmental Law is roughly the same as the number of ADR law faculty.<sup>55</sup>

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schools that offer the best curricular programs to match that interest. The same would be true of Oil & Gas Law, Sports Law, or the Law of Wine. These are not ideal areas of specialization because some law schools offer no courses at all in these areas. By contrast, every law school offers at least some ADR courses. Truly analogous subject areas would need to be ones in which the topic makes an appearance in every curriculum, but is heavily represented in only some schools' curricula.

<sup>51</sup> These schools are NYU, Georgetown, Florida, Northwestern, Boston University, Miami, and Michigan. The remaining three schools (Harvard, UCLA, and Stanford) all offer LLM degrees, but do not specify whether they are available with a focus on Tax.

<sup>52</sup> See, e.g., NYU, Florida, Virginia, Georgetown, Akron, Pittsburgh, Fordham, and Houston.

<sup>53</sup> At least six schools (Vermont, Lewis & Clark, Pace, Berkeley, Maryland, and Oregon) listed in the top ten of specialty programs in Environmental Law offer LLMs or other advanced degrees in the field.

<sup>54</sup> Among the top ten Environmental Law programs, seven (Vermont, Lewis & Clark, Pace, Georgetown, Berkeley, Colorado, Duke, and Oregon) house environmental law journals. A good number of other schools also publish environmental law journals. For a survey of environmental legal scholarship, see Richard J. Lazarus, *Environmental Scholarship and the Harvard Difference*, 23 HARV. ENVTL. L. REV. 327 (1999).

<sup>55</sup> I believe the number of faculty listed in the "Environmental Law" section understates the number of faculty actually teaching in the area, because the AALS also lists separate section in "Natural Resources," "Land Use Planning," and "Native American Law." Unless one defines Environmental Law extraordinarily narrowly, many of the faculty teaching in these areas are likely to engage in teaching that is correctly

Environmental Law and ADR, therefore, share at least some of the same features within the academy.

My point in this section is not to argue that ADR is like Tax or Environmental Law. Our fields share some commonalities, and I am certain we differ in important ways as well. Instead, my point is that the legal academy has experience with the kind of clustering and concentration that one would expect to see in an *Islands* model of development of a field. We in ADR undoubtedly would have much to learn from studying the evolution of these other areas' places within the legal academy.

- *How should schools weigh the costs and benefits of investing significant resources into a "specialty" area like this?*<sup>56</sup>
- *What is the proper balance between providing deep curricular offerings and assuring at least basic availability to all interested students?*<sup>57</sup>
- *What principles should guide hiring decisions in a rapidly changing subject area?*<sup>58</sup>

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under the "environmental" umbrella. Adding those numbers in brings the ranks of Environmental faculty higher than ADR faculty.

<sup>56</sup> At least some have suggested that specialty programs represent one of the few ways in which a law school can differentiate itself. See Peter V. Letsou, *The Future of Legal Education: Some Reflections on Law School Specialty Tracks*, 50 CASE W. RES. L. REV. 457 (1999). And yet, at the end of the day, some aspect of the resource allocation question within law schools will necessarily be distributive. In lieu of what is the school investing in this specialization?

<sup>57</sup> For one perspective on the evolution of curricular offerings in Environmental Law, see James L. Huffman, *The Past and Future of Environmental Law*, 30 ENVTL. L. 23 (2000). Enrollment in ADR courses is, at many institutions, so high that schools must often add sections, raise enrollment caps, or both. See, e.g., James R. Coben, *Summer Musings on Curricular Innovations to Change the Lawyer's Standard Philosophical Map*, 50 FLA. L. REV. 735 (1998).

<sup>58</sup> I am sure that no area of the law would self-describe as stagnant, and that every area of the law is dynamic in at least some ways. Within Environmental Law, though, I am confident that climate change and carbon emissions play a significant role in a modern curriculum. And few faculty who have been teaching in the field for very long would have come into the academy with this as their academic focus. Similarly, in the ADR world, most scholars to date have entered as specialists in Arbitration, Mediation, or Negotiation. Twenty years from now (well within the tenures of faculty being hired today), the real action in ADR could very well be Dispute Systems Design, New Governance, Collaborative Law, or Cooperative Law.

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### B. *Vitamins: Required in Small, Stand-Alone Doses*

A second possible future for ADR's place within the legal academy would see ADR treated as foundationally important, with every student receiving exposure to the topic as a small, relatively separate, supplement to the rest of the law school curriculum. Just as children (and adults, though with less conspicuous parental insistence) are told to take their daily vitamins, some law schools may insist that each student receive at least a little ADR. Might we see a future in which some law schools require their students to take a stand-alone ADR course as a complement to the rest of the curriculum?

#### 1. *The Idea of ADR as Vitamins*

The idea that ADR might be good for everyone is not new. ADR and several of its prominent components appeared in the recommendations of the MacCrate Report (The Report of the American Bar Association Section on Legal Education's Task Force on Law Schools and the Profession) in 1992.<sup>59</sup> The 2007 Carnegie Report criticizes the tendency of many law schools to provide a "subordinate place . . . [to] the practical legal skills, such as dealing with clients and ethical-social development," and it specifically encourages law schools to teach students negotiation skills.<sup>60</sup> Many have called for the legal academy to provide increased attention to ADR skills training.<sup>61</sup>

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<sup>59</sup> The MacCrate Report specifically listed "negotiation," "problem-solving," "communication," and "alternative dispute resolution" among the core skills it advocated for legal education. It said,

[a]lthough there are many lawyers who do not engage in litigation or make use of alternative dispute resolution mechanisms, even these lawyers are frequently in a position of having to consider litigation or alternative dispute resolution as possible solutions to a client's problem, or to counsel a client about these options, or to factor the options into planning for negotiation.

*Report of the Task Force on Law Schools and the Profession: Narrowing the Gap*, 1992 A.B.A. SEC. LEGAL EDUC. & ADMISSIONS B. 135 (The MacCrate Report).

<sup>60</sup> WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 7 (2007), available at [http://www.carnegiefoundation.org/files/elibrary/EducatingLawyers\\_summary.pdf](http://www.carnegiefoundation.org/files/elibrary/EducatingLawyers_summary.pdf). The report specifically highlights teaching Negotiation in law schools. *Id.* at 111-14.

<sup>61</sup> See, e.g., JULIE MACFARLANE, THE NEW LAWYER: HOW SETTLEMENT IS TRANSFORMING THE PRACTICE OF LAW (2008).

To the extent that ADR is properly categorized as a skill,<sup>62</sup> schools might sensibly decide it can best be taught in courses in which skill development is the explicit focus. The teaching materials in skill-building courses are typically different from other law school classes. Skills-based courses typically employ different assessment methodologies.<sup>63</sup> Even the faculty who teach skills-based courses are often different from those who teach other law school classes. Schools might reasonably decide that mixing skills instruction with other kinds of instruction would wind up decreasing the effectiveness of both. Schools might, therefore, decide to require students to take one or more ADR stand-alone courses, separate from their other requirements.

## 2. What the Data Suggest

Only a small number of schools currently require students to take separate courses in ADR.<sup>64</sup> Such requirements are a relatively new development within the legal academy.<sup>65</sup> I do not, however, have enough

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<sup>62</sup> To be certain, many aspects of ADR involve practice skills, and many people teaching ADR courses teach them as skills-development courses. But one could (and some of us occasionally do) teach ADR courses that are largely or entirely focused on the law of ADR. The field has a good number traditional law school casebooks providing evidence of materials that go beyond mere skill development. And, in perhaps the greatest evidence that ADR sometimes involves the study of law, several legal publishers produce ADR study aids focused on summarizing the law(s) of ADR. See, e.g., MICHAEL L. MOFFITT & ANDREA KUPFER SCHNEIDER, *DISPUTE RESOLUTION: EXAMPLES & EXPLANATIONS* (2008); JACQUELINE M. NOLAN-HALEY, *ALTERNATIVE DISPUTE RESOLUTION IN A NUTSHELL* (3d ed. 2008).

<sup>63</sup> For a survey of some of the assessment methodologies used in Negotiation courses, for example, see Charles B. Craver, *The Impact of Student GPAs and a Pass/Fail Option on Clinical Negotiation Course Performance*, 15 OHIO ST. J. ON DISP. RESOL. 373 (2000); Mary-Lynne Fisher & Arnold I. Siegel, *Evaluating Negotiation Behavior and Results: Can We Identify What We Say We Know?*, 36 CATH. U. L. REV. 395 (1987); Michael Moffitt, *Lights, Camera, Begin Final Exam: Testing What We Teach in Negotiation Courses*, 54 J. LEGAL EDUC. 91 (2004).

<sup>64</sup> The following nine schools report themselves as requiring ADR on the ABA/Oregon website: Appalachian School of Law, Dayton, Hastings, Cincinnati, Missouri-Columbia, Mercer, Pepperdine, Utah, and Vanderbilt. I do not know of any reliable way to test the accuracy or completeness of this list. I would be surprised, however, if the number of law schools with required ADR courses were significantly larger than this.

<sup>65</sup> For a very thoughtful survey of some of the efforts at ADR integration and requiring ADR instruction in law schools during the 1980s and 1990s, see Leonard L. Riskin, *Disseminating the Missouri Plan to Integrate Dispute Resolution into Standard Law School Courses: A Report on a Collaboration with Six Law Schools*, 50 FLA. L. REV. 589 (1998). One interesting thing to note is that the list of schools Riskin identifies as

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data to draw any conclusions about the likelihood that we will see more schools requiring ADR as stand-alone courses.

### 3. *Analogies to the Vitamins Model*

Every law school requires students to take courses on a range of different “Bar” topics. Contracts, Torts, and Civil Procedure are staples everywhere. But for at least two reasons, these required subject areas are not particularly useful as potential analogies to the *Vitamins* model of ADR. First, these foundational courses have been part of law school curricula for a century or more. The conditions that led to their adoption surely no longer exist today—even if the rationale for their continued inclusion on the list of required courses persists. Second, these Bar courses are not really helpful analogs to ADR because, quite simply, ADR is not tested on the Bar in most jurisdictions.<sup>66</sup>

The more promising analogy to ADR’s potential as a *Vitamin* would be Legal Research and Writing. For at least a century, law schools have experimented with different methods of teaching students skills that would now be considered part of a required Legal Research and Writing course.<sup>67</sup> Law schools began to offer LRW courses as stand-alone courses at least sixty

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having ADR instruction of a particular sort overlaps only partially with the list of schools that have active ADR programs today. In other words, the process of local experimentation, adoption, and (sometimes) rejection continues today.

<sup>66</sup> Some have called for this to change. See, e.g., Dori Cohen, *Making Alternative Dispute Resolution (ADR) Less Alternative: The Need for ADR as Both a Mandatory Continuing Legal Education Requirement and a Bar Exam Topic*, 44 FAM. CT. REV. 640 (2006). The New York State Bar Association recommended adding ADR to the Bar Exam as far back as 1999. See *Bringing ADR into the New Millennium: Report on the Current Status and Future Direction of ADR in New York*, 1999 N.Y.S.B.A. COMM. A.D.R., available at [http://www.nysba.org/AM/Template.cfm?Section=Substantive\\_Reports&CONTENTID=2742&TEMPLATE=/CM/ContentDisplay.cfm](http://www.nysba.org/AM/Template.cfm?Section=Substantive_Reports&CONTENTID=2742&TEMPLATE=/CM/ContentDisplay.cfm); see also Mark Boyko, *California Considers Putting ADR on State Bar Exam*, 10 DISP. RESOL. MAG., Fall 2003, at 30. Paula Young wrote in a post to the AALS ADR list-serv that Alabama, Virginia, and New York have tested ADR as an essay topic. Email from Paula Young to Michael Moffitt (Feb. 24, 2009) (on file with author).

<sup>67</sup> For an excellent and fascinating history of the early evolution of LRW programs and curricula, see Marjorie Dick Rombauer, *First-Year Legal Research and Writing: Then and Now*, 25 J. LEGAL EDUC. 538 (1973).

years ago.<sup>68</sup> And today, every accredited law school requires students to complete at least a minimum of coursework in LRW.<sup>69</sup>

The litany of questions with which LRW has wrestled as a field would sound familiar to almost anyone who has contemplated ADR's place in the legal academy.

- *What skill or skills are properly included within the purview of the topic?*<sup>70</sup>
- *Can one teach the skill, or is it simply something with which only some students are born?*<sup>71</sup>
- *If we can teach these skills, what pedagogical models and class structures best facilitate learning?*
- *Who is?*<sup>72</sup> (and who should be<sup>73</sup>) *teaching the skills?*

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<sup>68</sup> *Id.* at 540.

<sup>69</sup> See ABA Accreditation Standard 302(a)(3) (requiring "substantial instruction in . . . writing in a legal context, including at least one rigorous writing experience in the first year and at least one additional rigorous writing experience after the first year").

<sup>70</sup> For example, are basic grammar skills properly the domain of a course in Legal Research and Writing? This has been a topic of debate within LRW circles for at least several decades. See Rombauer, *supra* note 67, at 552. One can imagine, with empathy, the despair of LRW faculty who find themselves confronted with those law students who have little apparent grasp of basic grammar skills. How can a LRW professor hope to teach advanced persuasive writing without being able to assume such foundational skills? How often do ADR faculty wind up teaching basic listening skills when the lesson plan called for advanced inquiry techniques? How often do ADR faculty teach basic algebra to law students when the lesson plan called for assessing complex decision analysis tools?

<sup>71</sup> For a reaction to this view in the context of Legal Writing, see J. Christopher Rideout & Jill J. Ramsfield, *Legal Writing: A Revised View*, 69 WASH. L. REV. 35 (1994). ADR faculty frequently wrestle with similar questions of whether one can teach/learn ADR skills, or whether they are simply acquired through experience.

<sup>72</sup> What reason(s) explain the prominence of women among LRW faculty, particularly when compared with law faculty in most other subject areas? See Jo Anne Durako, *Second-Class Citizens in the Pink Ghetto: Gender Bias in Legal Writing*, 50 J. LEGAL EDUC. 562 (2000). To my knowledge, no parallel quantitative studies specifically focused on ADR law faculty have been conducted, prior to this one. We have seen, however, numerous calls to examine critically the inadequate numbers of minority faculty teaching ADR. The American Bar Association Section on Dispute Resolution held a session at the "Resolution and Resilience in New York" conference in 2004 entitled, "Perspectives on Race and ADR: From Law Professors of Color and Teachers of Dispute Resolution." Capital University has, for several years, held an annual conference for minority professionals in ADR. See also F. Peter Phillips, *Diversity in ADR: More Difficult to Accomplish than First Thought*, 15 DISP. RESOL. MAG., Spring 2009, at 14 (regarding minority ADR practitioners).

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- *In what ways are schools supporting (and not supporting) the idea that these skills are core to a law student's education?*<sup>73</sup>

Again, I do not imagine that LRW and ADR are companions in all regards. Each area has enjoyed (and struggled with) a different path within the legal academy. Still, LRW presents the most obvious analogy to ADR when we consider some school's decision to require their students to complete stand-alone ADR courses. I am confident that we have much to learn from those who have made LRW the focus of their academic careers.

### *C. Salt: Incorporated Throughout, but Not as Stand-Alone*

A third possible model for situating ADR within legal education would be to view it as a critical skill or set of knowledge which cannot be divorced from other lawyering skills or legal doctrines. No self-respecting chef would construct a meal entirely of salt, and yet many would not think of preparing a meal without using salt in small amounts in a number of the dishes. Might we see a future in which law schools intentionally sprinkle ADR throughout the curriculum?

#### *1. The Idea of ADR as Salt*

Perhaps schools will decide that ADR skills, like some other skills, are best learned in specific contexts. Some have suggested, for example, that settling disputes is different from crafting deals. Few would question that

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<sup>73</sup> In what ways are the academic and professional pedigrees of LRW faculty different from their law faculty colleagues? See Susan P. Liemer & Hollee S. Temple, *Did Your Legal Writing Professor Go to Harvard?: The Credentials of Legal Writing Faculty at Hiring Time*, 46 U. LOUISVILLE L. REV. 383 (2008). ADR faculty will recognize at least some familiar themes in questions about how to value practice experience and how to assess intellectual and scholarly achievement in a multi-disciplinary field.

<sup>74</sup> The LRW literature provides many examples of scholarship questioning the persistently disparate treatment of LRW faculty at many schools, with respect to issues such as salary, title, voting privilege, and office space. See Durako, *supra* note 72; David T. Ritchie, *Who Is on the Outside Looking In, and What Do They See?: Metaphors of Exclusion in Legal Education*, 58 MERCER L. REV. 991 (2007); Kathryn M. Stanchi & Jan M. Levine, *Gender and Legal Writing: Law Schools' Dirty Little Secrets*, 16 BERKELEY WOMEN'S L.J. 3 (2001). For a particularly wonderful (and wonderfully-readable) summary of some of the "politics" associated with Legal Writing, see Mary Beth Beazley, *"Riddikulus!": Tenure-Track Legal-Writing Faculty and The Boggart in the Wardrobe*, 7 SCRIBES J. LEGAL WRITING 79 (2000).

settlement looks different in personal injury cases, than it does in public policy disputes, than it does in divorce cases. Arbitration looks different in labor contexts, than it does in consumer contexts.

Building on this idea, some schools may conclude that the best way to teach students about ADR is not to treat ADR as a stand-alone topic, but rather to teach those aspects of it that are relevant to an existing course or field of study. Maybe Civil Procedure professors will teach Offer of Judgment Statutes and Rule 16 Settlement Conferences. Maybe Contracts professors will teach about arbitration clauses. Criminal Law professors might teach about plea bargaining and restorative justice. Torts professors might teach about confidential settlements, and the effect of contingent fee arrangements on settlement incentives. Estate Planning professors might discuss the use of mediation to work through complex family dynamics,<sup>75</sup> and so on.

## 2. *What the Data Suggest*

Some law schools have experimented with this *Salt* model of incorporating ADR into existing law school courses. For example, the University of Missouri-Columbia has for many years incorporated ADR concepts into its Torts classes.<sup>76</sup> More recently, students at the University of Nevada-Las Vegas take a course in Civil Procedure and ADR, as a combined topic.<sup>77</sup>

In most circumstances, however, it would be difficult for an outside observer to know whether a school engages in conscious incorporation of ADR into its existing courses. With few exceptions, the names of the courses would not change as a result of a faculty decision to provide students with greater exposure to ADR in these classes. Indeed, under the *Salt* model, one would not even know by looking at the backgrounds of the faculty teaching the courses. The faculty would not necessarily be experts in all aspects of ADR; in fact, few of them would likely have broad, formal training in ADR.

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<sup>75</sup> See, e.g., Susan N. Gary, *Mediation and the Elderly: Using Mediation to Resolve Probate Disputes over Guardianship and Inheritance*, 32 WAKE FOREST L. REV. 397 (1997).

<sup>76</sup> See, e.g., Melody Richardson Daily, Chris Guthrie & Leonard Riskin, *Damages: Using Case Study to Teach Law, Lawyering, and Dispute Resolution*, 2004 J. DISP. RESOL. 1; Riskin, *supra* note 65, at 590; see also Tom Baker, *Teaching Real Torts: Using Barry Werth's Damages in the Law School Classroom*, 2 NEV. L. J. 386 (2002).

<sup>77</sup> See Jean R. Sternlight, *Separate and Not Equal: Integrating Civil Procedure and ADR in Legal Academia*, 80 NOTRE DAME L. REV. 681 (2005).



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Instead, faculty from a range of disciplines would provide instruction on just those pieces of ADR that pertain specifically to their subject areas.

The data, therefore, does not tell us *whether* incorporation happens. We may, however, be able to infer from these data something about *which slices* of ADR are likely to get fuller attention, if incorporation happens in one kind of course or another. I think it is reasonable to imagine that the kind of ADR a faculty member teaches would probably shape the way in which that faculty member incorporated ADR into a non-ADR course. A faculty member who teaches Negotiation, for example, would be most likely to find ways to incorporate Negotiation concepts into another course, if she or he were intending to teach something about ADR. An Arbitration professor would be most likely to teach something about Arbitration, and so on. By examining the AALS Directory data, we can see relationships between ADR courses and non-ADR courses. In particular, we can learn something about the curricular tendencies of those who teach each of the four major ADR courses. And from that, we might derive some guesses about where and how incorporation might take place.

We might even be able to use the regressions in Appendix B to make some guesses about the nature of the incorporation, depending on the curricular foci of the faculty who are driving ADR incorporation at a particular school. For example, if a law school's decision to incorporate ADR were driven principally by those faculty members whose experience is primarily with Arbitration, we would be most likely to see the focus of ADR incorporation occur in courses like Contracts, Commercial Law, and Labor Law.<sup>78</sup> (Recall from section I.G. above that those who teach Arbitration are far more likely to be concentrated in these areas.) By contrast, if the impetus for ADR incorporation comes from those whose vision of ADR is primarily driven by Mediation, we would be more likely to see incorporation efforts focused on classes like Interviewing and Counseling. Those with a more generalist stance toward ADR might think to incorporate ADR principles into courses like Family Law, Legal Research & Writing, or Trusts & Estates.<sup>79</sup>

### 3. Analogies to the Salt Model

At least two areas of legal study jump to mind as possible analogies to the idea of *ADR as Salt*: International/Comparative Law and Ethics.

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<sup>78</sup> See *infra* Appendix B.6.

<sup>79</sup> See *infra* Appendix B.8.

Some schools have made the conscious decision to provide their students with greater exposure to international, comparative, and trans-national perspectives on the law by having faculty incorporate these perspectives into existing courses. Few would argue the increasing importance of global influences on modern legal problems or on modern law practice. Some have suggested that the best way to teach students about these issues is to have faculty who are substantive experts in some aspect of domestic law be the ones to present the international perspective as well. So, for example, a Civil Procedure professor might teach something about how discovery is handled in trans-national disputes, or in some entirely foreign judicial system. A Contracts professor might teach about international sale of goods around the same time he or she is teaching the relevant UCC provisions for domestic sales of goods, and so on.

Other schools have made the conscious decision to teach ethics broadly throughout the curriculum. One prominent ethics scholar has gone so far as to argue that “[l]egal ethics is the only subject taught in law school which every student will encounter in practice, regardless of their specialty.”<sup>80</sup> Whether this assertion is entirely accurate,<sup>81</sup> few would argue that instruction in ethics is a critical part of legal education.<sup>82</sup> Deborah Rhode has argued for the “pervasive method” of teaching ethics, pointing out that “professional responsibility considerations figure in all substantive areas” of law.<sup>83</sup> Echoing many of Rhode’s ideas, Roger Cramton and Susan Koniak urge that

the law and ethics of lawyering should integrate and revisit different parts of the curriculum the way upperclass courses such as administrative law, evidence, advanced civil procedure, federal courts, conflict of laws, trial

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<sup>80</sup> Russell G. Pearce, *Teaching Ethics Seriously: Legal Ethics as the Most Important Subject in Law School*, 29 LOY. U. CHI. L.J. 719, 735–36 (1998).

<sup>81</sup> I doubt very seriously that my Legal Research & Writing colleagues would accept the proposition that some practicing lawyers do their work without encountering research or writing. Furthermore, my colleagues who teach courses like Negotiation would undoubtedly argue not only about Negotiation’s ubiquity in legal practice, but also about its centrality to professional life for those law students who choose to do something other than practice law.

<sup>82</sup> In fact, no law school can survive an accreditation cycle if it fails to provide instruction specifically aimed at Legal Ethics. See ABA ACCREDITATION STANDARD 302(a) (ABA 2008-09).

<sup>83</sup> See Deborah L. Rhode, *Ethics by the Pervasive Method*, 42 J. LEGAL EDUC. 31, 50 (1992).

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practice, commercial law, collective bargaining, and insurance currently revisit first-year civil procedure or contracts courses in richer detail.<sup>84</sup>

Ethics might, therefore, be seen not only as a critical component of many different areas of legal instruction, but also as an organizing theme around which to integrate a law student's education.

The challenges and opportunities facing those who have sought to incorporate international or ethics perspectives would surely be familiar to those who have considered urging their non-ADR colleagues to teach pieces of ADR in existing courses. Experiments with incorporating ethics and international perspectives into legal curricula have been underway for long enough at this point that those of us focused on ADR would surely have many things to gain by exploring their experiences.

- *How can faculty be asked to add entirely new topics into courses that already feel time-constrained?*<sup>85</sup>
- *What incentive do faculty members have for stepping into areas with which they are less familiar?*<sup>86</sup>
- *What support can a faculty member receive for creating and implementing new lessons?*<sup>87</sup>
- *How might one handle the relative paucity of teaching materials focused on incorporating these concepts into existing courses?*<sup>88</sup>

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<sup>84</sup> See Roger C. Cramton & Susan G. Koniak, *Rule, Story, and Commitment in the Teaching of Legal Ethics*, 38 WM. & MARY L. REV. 145, 167 (1996) (urging that the instruction of legal ethics go beyond simple rules, into "other law—especially agency, criminal, evidence, procedural, and tort law—govern[ing] the conduct of lawyers and sometimes dictat[ing] a response different from that suggested on the face of the ethics rules."). *Id.* at 174.

<sup>85</sup> For a discussion of this and other implementation challenges in the context of adding international perspectives, see Franklin A. Gevurtz et al., *Report Regarding the Pacific McGeorge Workshop on Globalizing the Law School Curriculum*, 19 PAC. MCGEORGE GLOBAL BUS. & DEV. L.J. 267, 272 (2006).

<sup>86</sup> For an interesting account of how one law school created incentives for faculty to develop some international expertise (at perhaps the expense of incorporating ethics in the curriculum), see Michael P. Scharf, *Internationalizing the Study of Law*, 20 PENN ST. INT'L L. REV. 29 (2001).

<sup>87</sup> See Deborah L. Rhode, *Into the Valley of Ethics: Professional Responsibility and Educational Reform*, 58 LAW & CONTEMP. PROBS. 139 (1995) (describing some of the implementation challenges facing the "pervasive" method of teaching ethics).

<sup>88</sup> For a survey of teaching materials aimed at facilitating incorporation of international perspectives, see James R. Maxeiner, *Learning from Others: Sustaining the*

*D. Germs: Clandestinely Incorporated into Existing Courses*

A final model for the future of ADR in legal education is less intentional, less collectively determined, and even less easily observed than the first three. This model is one in which self-selected professors incorporate ADR principles, skills, or doctrine into existing law school offerings. ADR ideas are increasingly pervasive; and some might even say, with disfavor, that they have infested or infected an otherwise pure system of legal education.<sup>89</sup> Might we see a future in which law students are frequently exposed to ADR, but only in the context of certain courses, with certain professors.

*1. The Idea of ADR as Germs*

No matter how many credits are assigned to each course, no matter how many years it takes for students to receive a Juris Doctorate, law faculty must routinely resort to instructional triage. Some ideas, concepts, and skills make it, and some do not. Absent ABA accreditation standards demanding otherwise; therefore, we would reasonably expect to see variation in the outcomes of these localized law school triage decisions. Some law schools see ADR as critical enough to justify inclusion in a time-constrained curriculum, and some favor other topics. Even if a school decided that ADR is not central enough to require its inclusion (through a *Vitamins* or *Salt* model), it would be reasonable for us to imagine that at least some faculty at those schools would feel differently. They would be the ones to incorporate *ADR as Germs* into their classes.

One benefit to the *Germs* model of teaching ADR is that the faculty members who really care most about ADR wind up being the ones to teach it. In theory, they might be the ones with the deepest background in ADR, and they might even be comparatively better at teaching it than those without affinity for or training in the topic. The *Germs* model also removes many of the potential risks associated with the full-blown faculty decision making

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*Internationalization and Globalization of U.S. Law School Curriculums*, 32 FORDHAM INT'L L.J. 32, 40–41 (2008).

<sup>89</sup> For an example of such a view, see Owen M. Fiss, *Against Settlement*, 93 YALE L.J. 1073 (1984). For examples of responses to this view, see Robert A. Baruch Bush, *Mediation and Adjudication, Dispute Resolution and Ideology: An Imaginary Conversation*, 3 J. CONTEMP. LEGAL ISSUES 1, 7 (1989); Carrie Menkel-Meadow, *Narrowing the Gap by Narrowing the Field: What's Missing from the MacCrate Report—of Skills, Legal Science and Being a Human Being*, 69 WASH. L. REV. 593 (1994); Michael Moffitt, *Three Things to Be Against ("Settlement" Not Included)*, 78 FORDHAM L. REV. 1203 (2009); Jeffrey R. Seul, *Settling Significant Cases*, 79 WASH. L. REV. 881 (2004).

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process (read: dogfight) that would be required for a school to adopt an *Islands*, *Vitamins*, or *Salt* model of teaching ADR. The *Germs* model can pop-up, without notice to the general faculty, almost anywhere, and without much disruption to what other faculty members are doing.

At some schools, the *Germs* model may not be a permanent condition. Perhaps faculty who are clandestinely incorporating ADR into their non-ADR courses will be “outed” by disgruntled students.<sup>90</sup> Perhaps some administrators will insist that their faculties “stop this foolishness” and get back to teaching their classes the way they have always been taught. Maybe we would even see support groups for professors needing to recover from their addiction to the ideas of ADR. (“Hello, my name is Professor Moffitt, and I’m an ADRaholic. It has been two months since I discussed the possibility of non-zero-sum outcomes.” “Hello Professor Moffitt.”) Alternatively, at some schools, the *Germs* model could be merely transitional. Maybe those faculty members who choose to incorporate ADR into their classes will enjoy success, and the idea will catch hold in a way that makes it more central (as with a *Salt* or *Vitamins* model) to how the law school views its curriculum.

### 2. *What the Data Suggest*

I know of no reliable way to discern whether ADR is frequently incorporated into classes with course names that are not conspicuously ADR-focused. I freely confess that I incorporate ADR into my Civil Procedure course,<sup>91</sup> so the practice is at least not unheard of. At various gatherings of law faculty over the past few years, I have been asking professors from a wide range of disciplines whether they treat ADR as a topic in their courses. The great majority have said “Yes.” To be fair, I am sure the law professors I casually surveyed knew I was hoping for an answer in the affirmative. Furthermore, many of them responded “Yes” only after extracting assurances of confidentiality from me.<sup>92</sup> I am not, therefore, making an empirical claim

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<sup>90</sup> Theoretically, another professor might be the one to notice what her or his colleague is up to, but faculty at most law schools seem to observe each other teaching so rarely that I consider this a more remote possibility.

<sup>91</sup> Because I now serve as the Associate Dean for Academic Affairs at my school, I am not sure I properly serve as an example of truly “clandestine” incorporation. Both the Administration of my law school and those 1Ls who have read my syllabus have been on notice about my practice for some time.

<sup>92</sup> It is not clear to me that ADR is really poisonous enough to justify a request for priest-penitent level of confidentiality. I suspect that at least a number of the folks who said they incorporate ADR into their non-ADR courses were interested in keeping that

about the frequency with which individual law professors are incorporating ADR into non-ADR classes.

As with the *Salt* model, the AALS data might tell us something about what kind of ADR is being incorporated, or in what contexts. Those who teach ADR courses are not the only faculty who incorporate some aspects of ADR into their non-ADR courses, but it is probably reasonable to assume that faculty who teach an ADR course are more likely to incorporate ADR into their non-ADR courses than faculty who have no association with ADR. Looking at the list of non-ADR courses most commonly taught by ADR faculty, therefore, would probably give us some sense of the places where clandestine incorporation is most likely.<sup>93</sup> If one hundred ADR professors also teach Civil Procedure, and only a handful of ADR professors teach Banking Law, for example, we might reasonably imagine that more incorporation is happening in Civil Procedure than in Banking Law.<sup>94</sup> Furthermore, as with the *Salt* model, we might be able to make some guesses about the *kinds* of ADR different professors would be introducing, based on the courses they teach.

### 3. Analogies to the Germs Model

As possible analogies to the *Germs* model of ADR offerings, I tentatively suggest two: Critical Legal Studies and Law and Economics.

For some decades now, both Law and Economics and Critical Legal Studies (and its related Critical cousins) have occupied important places in legal education. Most law schools offer at least one stand-alone course focused on each of these perspectives. The greatest contribution of these perspectives, however, has not come from a course specifically focused on cost-benefit analysis, or a course devoted to deconstructing law's hierarchies. Instead, their principal contributions have come in the context of other courses. Many students learn of economic analysis in their Torts classes; in the context of exploring the allocation of duties and incentives. Many students learn of the possibility that different groups, or classes, have distinctly different experiences of law's potential for indeterminacy in courses like Constitutional Law. Some professors may include these perspectives because of their centrality to the course's topic. ("How can one

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quiet so they could continue to maintain that their course deserves at least its current number of credit hours, if not more.

<sup>93</sup> See *infra* Appendix C.

<sup>94</sup> The actual number of ADR faculty teaching Banking Law are three in 1997–1998, five in 2002–2003, and four in 2007–2008.

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teach negligence today without CBA?” “How can one teach judicial interpretation without CLS?”) Some professors may include these perspectives out of a sense that the topics hold independent importance. (“This perspective is important, and when else are law students going to learn this?”) In either event, CLS and Law & Economics continue to make appearances in classrooms on a professor-by-professor basis.

From those who have been deeply engaged in Critical Legal Studies or Law and Economics, we in ADR probably have much to learn. They have been wrestling with many of the same questions that continue to appear in ADR.

- *What and how much disciplinary training is required to teach these concepts successfully?*<sup>95</sup>
- *Must scholarship in our field take a certain form?*<sup>96</sup>
- *How can one navigate the faculty politics of those who dismiss the value of our perspective?*<sup>97</sup>
- *How can one introduce complex concepts—to students or to colleagues—without falling into inaccessible and meaningless jargon?*<sup>98</sup>

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<sup>95</sup> See, e.g., Christopher Tomlins, *Framing the Field of Law's Disciplinary Encounters: A Historical Narrative*, 34 LAW & SOC'Y REV. 911 (2000). For a survey of different disciplinary perspectives' potential contributions, see Carrie Menkel-Meadow, *Taking Law and \_\_\_\_\_ Really Seriously: Before, During and After "The Law"*, 60 VAND. L. REV. 555 (2007).

<sup>96</sup> Mark Tushnet noted, for example, the irony that scholarship on Critical Legal Studies commonly takes: the very traditional form of an expository essay published in a student-edited law journal. Mark Tushnet, *Critical Legal Studies: A Political History*, 100 YALE L.J. 1515 (1991). For a history of law and economics scholarship, see Don Bradford Hardin Jr., *Why Cost-Benefit Analysis? A Question (and Some Answers) About the Legal Academy*, 59 ALA. L. REV. 1135 (2008).

<sup>97</sup> For surveys and critiques of the experiences of CLS and Law and Economics, see, for example, Carrie Menkel-Meadow, *Feminist Legal Theory, Critical Legal Studies, and Legal Education or "The Fem-Crits Go to Law School,"* 38 J. LEGAL EDUC. 61 (1988); Gary Minda, *The Jurisprudential Movements of the 1980s*, 50 OHIO ST. L.J. 599 (1989); Tushnet, *supra* note 96; Thomas S. Ulen, *The Prudence of Law and Economics: Why More Economics Is Better*, 26 CUMB. L. REV. 773 (1995–1996); Louis E. Wolcher, *Senseless Kindness: The Politics of Cost-Benefit Analysis*, 25 LAW & INEQ. 147 (2007).

<sup>98</sup> For an engaging and accessible treatment of this issue in the context of CLS, see Jerry L. Anderson, *Law School Enters the Matrix: Teaching Critical Legal Studies*, 54 J. LEGAL EDUC. 201 (2004).

## IV. CONCLUSION AND SUMMARY OF THE EMPIRICAL STUDY

In lieu of a traditional law review conclusion, I offer the following (almost entirely numbers-free) summary of the empirical study that forms the heart of this article.

**Size.** To the extent AALS listings are a proxy for the size of a field of legal study, ADR is at least average-sized, perhaps a little above average. It is the 25th largest subject area, out of the ninety-six subject areas listed in the AALS Directory. Other subject areas of roughly the same size include Administrative Law, Civil Rights, Environmental Law, Intellectual Property, and Federal Taxation.

**Growth.** Over the past ten years, the ranks of ADR teachers in law schools has grown at a slow, steady pace of about 2.25%. This suggests that whatever explosive growth the field may have enjoyed at one point, the field is in a more mature, stable phase now. The rate of growth in the ranks of ADR teachers is about half of the rate of growth in the ranks of members of the ABA Section on Dispute Resolution.

**New Faculty and Turnover.** Roughly half of the faculty teaching ADR today were not teaching ten years ago. And about one-third of those who were teaching ADR ten years ago are no longer teaching ADR today. Of those who are leaving the field, most have relatively little teaching experience; turnover is not merely the result of the most experienced professors retiring after long careers.

**Gender.** Roughly one-third of the ADR law teachers are women, and the percentage appears to be increasing slowly. Almost half of the new ADR faculty added to the AALS Directory over the last five years were women. Within the field, gender plays a significant role in determining who teaches what. Among ADR faculty, women are far more likely than men to teach Mediation and Negotiation, and men are far more likely to teach Arbitration.

**Teaching experience.** We are a young field, with roughly half of current ADR teachers having fewer than five years of teaching experience. The trend, however, is toward a more experienced field, with a growing percentage of faculty (currently almost one-third) having more than ten years of experience teaching. Faculty with six to ten years of teaching experience are more likely than their more junior or more senior colleagues to teach multiple ADR courses. Faculty with more than ten years of teaching experience are more likely to teach Arbitration.

**ADR Courses Taught.** A survey course on ADR is the most common course for a faculty member listed in the AALS ADR Subject Area. Separate courses on Negotiation, Mediation, and Arbitration are also prevalent. Clinics



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and courses on various international aspects of dispute resolution appear also to be somewhat common, although the data on these are more mixed.

**ADR Courseloads.** A very small percentage of ADR faculty teach more than one different ADR course, and the number of these “ADR specialists” is not growing.

**Non-ADR Courses.** ADR faculty teach courses in virtually every part of the law school curriculum. Dozens of ADR faculty also teach courses that are typically required in law schools, with Civil Procedure, Legal Ethics, Contracts, and Legal Research and Writing the most common among these. ADR faculty also frequently teach courses that are thematically related to ADR (for example, Labor Law, Trial Advocacy, Family Law, and International Law). ADR faculty who teach Arbitration are far more likely than their colleagues, while those who teach Mediation are far more likely to teach Interviewing and Counseling.

**Ranking and School Reputation.** Neither a school’s overall U.S. News ranking, nor its “peer scores” from other law professors has any correlation to the likelihood of members of its faculty teaching ADR. The majority of ADR faculty teach at schools in the top two tiers of the U.S. News annual ranking of law schools, and the growth appears to be coming primarily in these top two tiers as well. More experienced ADR faculty tend to teach at schools with better reputations, although, I suspect that is not a phenomenon unique to ADR. Factors other than reputation or ranking appear to be shaping the distribution of those teaching ADR.

## APPENDIX A: THE AALS DIRECTORY OF LAW TEACHERS DATA

The first, and by far the most significant, source on which I relied is a database my assistants and I constructed from information provided in the American Association of Law Schools Annual Directories of Law Teachers. Published each year, these directories provide considerable information about those who teach in law schools.<sup>99</sup>

Data in the Directory are based entirely on the information supplied to us by law school deans and individual teachers. Questionnaires were sent to the law schools in April. Each dean's office was asked to complete a dean's questionnaire listing all whose names should be included with the school's list in the list of Teachers by School for 2007–2008. Those listed who did not have a biographical sketch in the 2006–2007 Directory were asked to complete the Questionnaire for New Faculty Members. These data were entered by the Association's staff.<sup>100</sup>

I chose the 2007–2008 directory because it was the most current at the time I began this project, and then I also selected the 2002–2003 and 1997–1998 directories to provide some information about the most recent decade. Were time and resources infinite, I might reasonably have gone back farther, or I might have chosen more years within the past decade. I decided that these three years would at least permit me to begin to paint a picture of the current state of the field.

This dataset represents a complete snapshot of that portion of the field captured in the AALS directory. It includes relatively minor risks associated with self-reported data. Faculty members have every incentive to complete the survey, and they have a generous amount of time in which to do so. The information listed is probably reliable as well, despite being self-reported. If the form asked respondents to list their weight, we might be distrustful; but I think there is good reason to trust respondents when they provide the school

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<sup>99</sup> *The AALS Directory of Law Teachers*, 2007–08 ASS'N AM. L. SCH. 9. The Directory lists the faculty in "Member Schools," "Fee Paid Schools," and "Canadian Schools." The individual faculty listings in the ADR Subject Area—the portion of the directory on which I base many of my analyses in this article—appear to include only law schools in the United States.

<sup>100</sup> *Id.*

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at which they teach, their years of experience, the courses they teach,<sup>101</sup> and their gender.<sup>102</sup>

The data were not in the easiest format for analysis, in large part because each school and professor has different names for courses that are fundamentally the same course. After collecting data on hundreds of courses, I went through and used my judgment about which course names were synonyms for other course names. "Legal History," "American Legal History," and "History of American Law" were all treated as the same course. "Corporations," "Business Associations," "Business Organizations," and "Business Enterprises" were all treated as the same. I did the same for ADR courses.

The most significant shortcoming of the AALS Directory data, in my view, is the possibility (I would say the near certainty) that it misses people. In particular, I suspect that it misses a good percentage of the non-tenure-track faculty members who teach ADR. Not everyone listed in the AALS directory is tenure-track by any means, and many of those listed among ADR teachers are non-tenure-track; but I suspect that a good percentage of the ADR activity in law schools is not necessarily captured in the AALS directory information. I have refrained from repeating this caveat at each juncture in this article. Instead, I have tried to do the best analysis I could with the data I could find; and my hope would be that some researcher more clever than me will someday paint an even more complete picture of ADR in law schools.

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<sup>101</sup> I am open to the possibility that some law faculty *ought* to be embarrassed by some of the courses they teach, but I doubt their responses to the AALS survey are inaccurate.

<sup>102</sup> In fact, of the more than 1500 entries contained in the database, my assistants and I found only a handful that had clearly omitted information. In those cases, the respondents had left the "gender" designation blank, and so my research assistants went on the web and filled in the missing information based on information posted on each of these faculty members' law schools' websites. We had no way of knowing, of course, whether they had omitted to mention a course that they taught, or misrepresented how long they had taught a particular course; but again, the risk of inaccuracies in this regard felt tolerably low.

## APPENDIX B: REGRESSIONS OF ADR COURSES

<b>Appendix B.1</b> <b>Likelihood of Teaching the Course “ADR”</b> <b>in the 2007–2008 AALS Directory, Logit Model</b>	
<b>Variable</b>	<b>Coefficient (Standard Error)</b>
<b>Law School Ranking</b> US News Overall Ranking (Tier 1 through 4)	<b>.246 (.083)</b>
<b>New Faculty</b> 1–5 Years of Experience	.030 (.211)
<b>Experienced Faculty</b> More than 10 Years Experience	.561 (.234)
<b>Gender</b> Female=1	.217 (.189)
<b>Constant</b>	<b>-.401 (.269)</b>
Bolded entries are significant at the $p < .05$ level. N = 569 Pseudo R <sup>2</sup> = 0.020	

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<b>Appendix B.2</b> <b>Likelihood of Teaching the Course “Arbitration”</b> <b>in the 2007–2008 AALS Directory, Logit Model</b>	
<b>Variable</b>	<b>Coefficient (Standard Error)</b>
<b>Law School Ranking</b> US News Overall Ranking (Tier 1 through 4)	<b>-.235 (.136)</b>
<b>New Faculty</b> 1–5 Years of Experience	<b>.078 (.432)</b>
<b>Experienced Faculty</b> More than 10 Years Experience	<b>.865 (.411)</b>
<b>Gender</b> Female=1	<b>-1.435 (.483)</b>
<b>Constant</b>	<b>-1.879 (.430)</b>
Bolded entries are significant at the $p < .05$ level. N = 569 Pseudo R <sup>2</sup> = 0.079	

**Appendix B.3**  
**Likelihood of Teaching the Course “Mediation”**  
**in the 2007–2008 AALS Directory, Logit Model**

<b>Variable</b>	<b>Coefficient (Standard Error)</b>
<b>Law School Ranking</b> US News Overall Ranking (Tier 1 through 4)	.069 (.123)
<b>New Faculty</b> 1–5 Years of Experience	-.542 (.343)
<b>Experienced Faculty</b> More than 10 Years Experience	.200 (.363)
<b>Gender</b> Female=1	<b>.937 (.276)</b>
<b>Constant</b>	<b>-2.392 (.442)</b>
Bolded entries are significant at the $p < .05$ level. N = 569 Pseudo R <sup>2</sup> = 0.020	

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<b>Appendix B.4</b> <b>Likelihood of Teaching the Course “Negotiation”</b> <b>in the 2007–2008 AALS Directory, Logit Model</b>	
<b>Variable</b>	<b>Coefficient (Standard Error)</b>
<b>Law School Ranking</b> US News Overall Ranking (Tier 1 through 4)	<b>-.234 (.110)</b>
<b>New Faculty</b> 1–5 Years of Experience	.283 (.341)
<b>Experienced Faculty</b> More than 10 Years Experience	.641 (.353)
<b>Gender</b> Female=1	<b>.727 (.241)</b>
<b>Constant</b>	<b>-1.741 (.384)</b>
Bolded entries are significant at the $p < .05$ level. N = 569 Pseudo R <sup>2</sup> = 0.020	

<b>Appendix B.5</b> <b>Likelihood of Teaching More Than One ADR Course</b> <b>in the 2007–2008 AALS Directory, Logit Model</b>	
<b>Variable</b>	<b>Coefficient (Standard Error)</b>
<b>Law School Ranking</b> US News Overall Ranking (Tier 1 through 4)	.129 (.110)
<b>New Faculty</b> 1–5 Years of Experience	-.398 (.385)
<b>Experienced Faculty</b> More than 10 Years Experience	<b>-1.219 (.392)</b>
<b>Gender</b> Female=1	<b>-.789 (.249)</b>
<b>Constant</b>	<b>2.30 (.438)</b>
Bolded entries are significant at the $p < .05$ level. N = 569 Pseudo R <sup>2</sup> = 0.020	



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<b>Appendix B.6</b>			
<b>Regression of Teaching Mediation, Probit Model</b>			
	Coefficient	P-value	Percent Change in Likelihood
Listed in 2002–2003 Directory	-0.016	0.453	-3.958
Listed in 2007–2008 Directory	0.092	0.249	25.989
Gender Female=1	0.276	<b>0.008</b>	98.275
Experienced Faculty More than 10 years of experience	-0.006	0.482	-1.502
Mid-Level Faculty Between 5–10 years of experience	0.055	0.337	14.800
Number of ADR Courses	1.197	<b>0.000</b>	301.858
School “Peer Score” US News data. Scale of 0 – 5; 5 is best possible.	0.009	0.446	2.270
Civil Procedure	-0.100	0.246	-22.512
Constitutional Law	-0.269	0.145	-50.591
Contracts	-0.776	<b>0.000</b>	-88.390
Employment Law	-0.445	0.100	-69.904
Family Law	-0.356	<b>0.029</b>	-61.070
International Business Transactions	-4.664	0.472	-100.000
International Law	-4.474	0.473	-100.000
Interviewing & Counseling	0.398	<b>0.012</b>	157.535
Labor Law	-0.928	<b>0.000</b>	-92.559
Trusts & Estates	0.406	0.072	159.887
Constant	-2.768	0.000	
Bolded entries are significant at the p<.05 level.			

<b>Appendix B.7</b>			
<b>Regression of Teaching Negotiation, Probit Model</b>			
	Coefficient	P-value	Percent Change in Likelihood
Listed in 2002–2003 Directory	0.028	0.399	4.999
Listed in 2007–2008 Directory	0.085	0.215	15.860
Gender Female=1	0.164	<b>0.043</b>	32.364
Experienced Faculty More than 10 years of experience	-0.174	0.058	-26.473
Mid-Level Faculty Between 5–10 years of experience	-0.075	0.243	-12.274
Number of ADR Courses	0.978	<b>0.000</b>	169.528
School “Peer Score” US News data. Scale of 0 – 5; 5 is best possible.	0.157	<b>0.002</b>	27.205
Administrative Law	-0.090	0.305	-14.708
Civil Procedure	0.049	0.334	8.783
Constitutional Law	-0.205	0.124	-30.975
Contracts	-0.316	<b>0.013</b>	-43.889
Employment Law	0.006	0.487	1.021
Family Law	0.005	0.487	0.845
Int’l Business Transactions	-1.037	<b>0.002</b>	-88.974
International Law	-0.246	0.153	-36.148
Interviewing & Counseling	0.007	0.484	1.173
Legal Research & Writing	0.062	0.344	11.185
Trial Advocacy	0.122	0.166	22.964
Constant	-2.626	<b>0.000</b>	-455.124

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<b>Appendix B.8</b>			
<b>Regression of Teaching ADR, Probit Model</b>			
	Coefficient	P-value	Percent Change in Likelihood
Listed in 2002–2003 Directory	0.018	0.425	1.041
Listed in 2007–2008 Directory	-0.087	0.178	-4.869
Gender Female=1	0.175	<b>0.024</b>	10.156
Experienced Faculty More than 10 years of experience	0.106	0.132	6.032
Mid-Level Faculty Between 5–10 years of experience	0.224	<b>0.009</b>	12.812
Number of ADR Courses	1.805	<b>0.000</b>	102.437
School “Peer Score” US News data. Scale of 0 – 5; 5 is best possible.	-0.288	<b>0.000</b>	-16.366
Administrative Law	0.137	0.156	7.660
Civil Procedure	0.182	<b>0.037</b>	10.292
Constitutional Law	0.007	0.480	0.386
Contracts	-0.187	<b>0.049</b>	-10.728
Criminal Law	-0.159	0.152	-9.215
Employment Law	-0.726	<b>0.000</b>	-42.382
Family Law	0.398	<b>0.002</b>	21.335
Int’l Business Transactions	-0.385	<b>0.014</b>	-22.594
International Law	-0.031	0.422	-1.776
Interviewing & Counseling	-0.185	0.104	-10.660
Legal Research & Writing	0.232	<b>0.047</b>	12.755
Property	-0.015	0.468	-0.834
Torts	0.164	0.093	9.168
Trial Advocacy	0.180	0.059	10.062
Trusts & Estates	0.507	<b>0.031</b>	25.493
Constant	-0.789	<b>0.000</b>	

<b>Appendix B.9</b>			
<b>Regression of Teaching Arbitration, Probit Model</b>			
	Coefficient	P-value	Percent Change in Likelihood
Listed in 2002–2003 Directory	-0.138	0.137	-26.019
Listed in 2007–2008 Directory	-0.238	<b>0.034</b>	-40.560
Gender Female=1	-0.919	<b>0.000</b>	-87.914
Experienced Faculty More than 10 years of experience	0.341	<b>0.003</b>	103.848
Mid-Level Faculty Between 5–10 years of experience	0.034	0.402	7.354
Number of ADR Courses	0.743	<b>0.000</b>	160.419
School “Peer Score” US News data. Scale of 0 – 5; 5 is best possible.	0.088	0.090	19.045
Civil Procedure	-0.600	<b>0.000</b>	-75.238
Commercial Law	0.386	<b>0.028</b>	117.003
Constitutional Law	0.311	<b>0.031</b>	88.957
Contracts	0.329	<b>0.007</b>	96.578
Employment Law	0.070	0.357	16.151
Employment Discrimination	-0.047	0.396	-9.767
Ethics	-0.320	<b>0.046</b>	-51.415
Evidence	0.100	0.301	23.711
Family Law	-0.676	<b>0.015</b>	-80.269
Int’l Business Transactions	0.203	0.177	52.421
International Law	0.158	0.225	39.217
Interviewing & Counseling	-0.030	0.450	-6.309
Labor Law	1.044	<b>0.000</b>	601.105
Legal Research & Writing	-0.535	<b>0.032</b>	-71.603
Trial Advocacy	0.093	0.303	21.968
Constant	-2.344	<b>0.000</b>	

## FOUR VISIONS OF THE FUTURE OF ADR IN LAW SCHOOLS

### APPENDIX C: NUMBER OF ADR FACULTY TEACHING NON-ADR COURSES

<b>Appendix C</b>			
<b>Number of Faculty Teaching Non-ADR Courses<sup>103</sup></b>			
	1997– 1998	2002– 2003	2007– 2008
Civil Procedure	93	86	104
Clinical Teaching <sup>104</sup>	102	89	97
Labor Law	94	87	78
Legal Ethics	68	74	77
Trial and Appellate Advocacy	80	65	74
Contracts	71	70	70
Family Law	40	49	58
Legal Research & Writing	36	43	58
Torts	55	54	57
Evidence	50	47	47
International Law	26	30	43
Interviewing & Counseling	42	49	42
Constitutional Law	45	44	42
Administrative Law	47	40	41
Int'l Business	19	32	36
Employment Discrimination	40	33	34
Criminal Law	29	32	34
Employment Law	28	30	31
Property	21	26	31
Comparative Law	17	20	26
Federal Courts	28	22	25
Conflicts of Laws	23	21	24
Commercial Law	28	23	22
Criminal Procedure	19	21	22
Health Law	16	15	21

<sup>103</sup> Other non-ADR courses taught by at least ten ADR faculty in the 2007–2008 Directory include Juvenile Law, Legislation, Women and the Law, International Organizations, Commercial Paper, Intellectual Property, Legal History, Education Law, Securities Regulation, and Local Government Law.

<sup>104</sup> As I note above, I suspect that many of the faculty in this category are, in fact, teaching Mediation Clinics, and therefore ought to be categorized among the ADR classes. *See supra* Part III.E.

Corporations	16	23	19
Remedies	23	21	19
Civil Rights	23	16	19
Environmental Law	15	14	19
Jurisprudence	14	22	18
Law Practice Management	22	18	17
Trusts and Estates	11	13	16